THE GENERAL STATUTES OF NORTH CAROLINA

-

ANNOTATED

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1996 CUMULATIVE SUPPLEMENT

VOLUME 16

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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1996 CUMULATIVE SUPPLEMENT

Volume 16

Chapters 113 through 116C

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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K. J. Kennedy and F. J. Payne

Annotated through 470 S.E.2d 425. For complete scope of annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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Preface

This Cumulative Supplement to Volume 16 contains the general laws of a permanent nature enacted by the General Assembly through the 1996 Second Extra Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1996 Second Extra Session affecting Chapters 113 through 116C of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 343, p. 303.
North Carolina Court of Appeals Reports through Volume 121, p. 513.
South Eastern Reporter 2nd Series through Volume 470, p. 425.
Federal Reporter 3rd Series through Volume 83, p. 1423.
Federal Supplement through Volume 924, p. 224.
Federal Rules Decisions through Volume 165, p. 700.
Bankruptcy Reports through Volume 195, p. 823.
Supreme Court Reporter through Volume 116, p. 1711.
North Carolina Law Review through Volume 74, p. 1319.
Wake Forest Law Review through Volume 30, p. 1008.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2B.

Forestry Study Act.

§§ 113-44.3 through 113-44.6: Repealed by Session Laws 1995 (Reg. Sess., 1996), c. 653, s. 4, effective June 21, 1996.

ARTICLE 2C.

State Parks Act.

§ 113-44.15. Parks and Recreation Trust Fund.

(a) There is established a Parks and Recreation Trust Fund in the State Treasurer's Office. The Trust Fund shall be a nonreverting special revenue fund consisting of gifts and grants to the Trust Fund, monies credited to the Trust Fund pursuant to G.S. 105-228.30(b), and other monies appropriated to the Trust Fund by the General Assembly.

(b) Funds in the Trust Fund are annually appropriated to the North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

(1) Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition.
(2) Thirty percent (30%) to provide matching funds to local governmental units on a dollar-for-dollar basis for local park and recreation purposes. These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.
(3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses associated with managing capital improvements projects, acquiring land, and administration of local grants programs.

(c) The North Carolina Parks and Recreation Authority shall report on an annual basis to the Joint Legislative Commission on Governmental Operations, the appropriations committees of the House of Representatives and the Senate, and the Fiscal Research Division on allocations from the Trust Fund. (1993 (Reg. Sess., 1994), c. 772, s. 1; 1995, c. 456, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 20.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1996, in subsection (a), in the second sentence added "monies credited to the Trust

Fund pursuant to G.S. 105-228.30(b)", and substituted "the Trust Fund" for "it" following "appropriated to", and deleted the last paragraph regarding the intent of the General Assembly to dedicate a percentage of the deed stamp tax to the Parks and Recreation Trust Fund and the Natural Heritage Trust Fund; in subsection (b) substituted "North Carolina Parks and Recreation Authority" for "Department" in the introductory language, substituted "Sixty-five percent (65%)" for "Seventy-five percent (75%)" in subdivision (b)(1), in subdivision (b)(2) substituted "Thirty percent (30%)" for "Twenty percent (20%)", and substituted "North Carolina Parks and Recreation Authority" for "Secretary", and added the last sentence of the subsection; and substituted "North Carolina Parks and Recreation Authority" for "Department" in subsection (c).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted "Beginning July 1, 1995" from the beginning of subsection (b) and made a related change.

ARTICLE 5A.

Natural Heritage Trust Program.

§ 113-77.8. Natural Heritage Trust Fund Board of Trustees.

(a) Expenditures from the Fund shall be authorized by a nine-member Board of Trustees. Three members shall be appointed by the Governor, three by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and three by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. Persons appointed shall be knowledgeable in the acquisition and management of natural areas. Each appointing officer shall designate one of his initial appointments to serve a two-year term, one to serve a four-year term, and one to serve a six-year term. Thereafter, all appointments shall be for six years, subject to reappointment. All initial appointments shall be made on or before January 1, 1988. The Governor shall appoint one Trustee to serve as Chairman of the Board. The Secretary shall provide the Trustees with staff support and meeting facilities using expenditures from the Fund. The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution.

(b) The Trustees shall meet at least once each year and may hold special meetings at the call of the Chairman or a majority of the members.

(c) The Trustees shall receive the per diem allowed for other members of boards and commissions of the State as fixed in the Biennial Appropriations Act, and, in addition, the Trustees shall receive subsistence and travel expenses as fixed by statute for such purposes. Travel and subsistence expenses shall be allowed while going to or from any place of meeting or when on official business. Per diem payments shall include necessary time spent in traveling to and from their places of residence to any meeting place or while traveling on official business. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund. (1987, c. 871, s. 1; 1989, c. 86, s. 1; 1993 (Reg. Sess., 1994), c. 772, s. 3; 1995, c. 490, s. 37(a).)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment, in the second sentence of subsection (a), substituted "General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121" for "Lieutenant Governor", and added "General Assembly upon the recommendation of the" preceding "Speaker" and "in accordance with G.S. 120-121" following "House". For the applicability of this amendment, see Editor's note.

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

§ 113-129. Definitions relating to resources.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 586, s. 1, effective June 20, 1996, amended Session Laws 1993, c. 515, s. 8, by deleting the July 1, 1996 expiration date for subdivision (14).

Article 13.

Jurisdiction of Conservation Agencies.

§ 113-133. Abolition of local coastal fishing laws.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 627, s. 2, purported to amend subsection (e) of this section by deleting "Currituck: Session Laws 1959, Chapter 545" from the list of local acts; however, as the amendment was intended to be made to G.S. 113-133.1, it has not been set out.

§ 113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained.

(a) The enjoyment of the wildlife resources of the State belongs to all of the people of the State.

(b) The Wildlife Resources Commission is charged with administering the governing statutes in a manner to serve as equitably as may be the various competing interests of the people regarding wildlife resources, considering the interests of those whose livelihood depends upon full and wise use of renewable resources and the interests of the many whose approach is recreational. Thus, except as provided in subsection (e), all special, local, and private acts and ordinances enacted prior to the ratification date of the act creating this section regulating the conservation of wildlife resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of wildlife resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. In particular, this section does not repeal local acts which restrict hunting primarily for the purpose of protecting travelers on the highway, landowners, or other persons who may be endangered or affected by hunters' weapons or ammunition or whose property may be damaged.

(c) This Subchapter is intended to express State policy relating to the conservation of wildlife resources. Nothing in this section is intended to repeal or prevent the enactment of any city or county ordinance otherwise validly authorized which has only a minor and incidental impact on the conservation of marine and estuarine and wildlife resources. This section does not repeal G.S. 153A-127, G.S. 153A-131, G.S. 160A-182, G.S. 160A-187, and G.S. 160A-188, nor any local act establishing bird sanctuaries, except that local authorities operating bird sanctuaries may not regulate the taking of game or otherwise abrogate valid laws and regulations pertaining to the conservation of wildlife resources.

(d) Nothing in this Subchapter is intended to repeal or abridge the regulatory authority of the Game Commission of Currituck County or the Dare County Game and Wildlife Commission.

(e) **(See editor's note)** Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox season); Session Laws 1961, Chapter 348 (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1933, Chapter 308.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937 Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Currituck: Session Laws 1959, Chapter 545.

Dare: Session Laws 1973, Chapter 259.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376.

Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585, as amended by Session Laws 1985, Chapter 421; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522.

(f) The Wildlife Resources Commission is directed to review periodically all local acts affecting conservation of wildlife resources and notify local authorities and the General Assembly as to those that:

(1) Substantially duplicate provisions of this Subchapter.

(2) Seriously conflict with conservation policies set out in this Subchapter.

(3) Seriously conflict with conservation policies developed for the people of this State as a whole by the Wildlife Resources Commission.

(g) Notwithstanding G.S. 113-133.1(b), Chapter 565 of the Session Laws of 1977 is retained in effect. The following local conservation acts which specify that they must be specifically repealed are so repealed: Chapters 434 and 441 of the Session Laws of 1977. To provide for their retention or repeal in accordance with provisions applying to all other local wildlife acts, the following acts are amended to repeal the cited sections: Section 11, Chapter 258, Session Laws of 1969; and Section 4, Chapter 585, Session Laws of 1977. (1979, c. 830, ss. 1, 14; 1979, 2nd Sess., c. 1285, ss. 2, 11; c. 1324, s. 2; 1981, c. 249, s. 2; c. 250, s. 2; 1983, c. 109, s. 2; c. 487, s. 2; 1985, c. 112, s. 1; c. 302, s. 1; c. 689, s. 27; 1986, c. 893, s. 4; 1987, c. 33, s. 4; c. 131, ss. 4, 5; c. 245, s. 2; c. 282, s. 16; 1987 (Reg. Sess., 1988), c. 955, s. 4; 1989, c. 80, s. 2; 1989 (Reg. Sess., 1990), c. 837, s. 2; 1993, c. 65, s. 1; c. 221, s. 3; 1995, c. 509, s. 55.)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 627, s. 2, effective June 21, 1996, attempted to amend subsection (e) of this section by deleting "Currituck: Session Laws 1959, Chapter 545" from the list of local acts; however, as the act stated that G.S. 113-133(e) was amended, the amendment has not been given effect.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, deleted "Session Laws 1973, Chapter 124, amending Session Laws 1969, Chapter 121 (as it pertains to wild turkeys)" from the entry for "Gates".

§ 113-135. General penalties for violating Subchapter or rules; increased penalty for prior convictions; interpretive provisions.

(a) Any person who violates any provision of this Subchapter or any rule adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that punishment for violation of the rules of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

(1) For a first conviction, as a Class 3 misdemeanor.

(2) For a second or subsequent conviction within three years, as a Class 2 misdemeanor.

(b) In interpreting this section, provisions elsewhere in this Subchapter making an offense a misdemeanor "punishable in the discretion of the court" must be considered to set a different level of punishment, to be interpreted in the light of G.S. 14-3 or any equivalent or successor statute. Noncriminal sanctions, however, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute different levels of punishment so as to oust criminal liability. Any previous conviction of an offense under this Subchapter, or under rules authorized by it, serves to increase the punishment under subsection (a) even though for a different offense than the second or subsequent one.

(c) For the purposes of this Subchapter, violations of laws or rules administered by the Wildlife Resources Commission under any former general or local law replaced by the present provisions of this Subchapter are deemed to be violations of laws or rules under this Subchapter. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1979, c. 830, s. 1; 1987, c. 827, s. 98; 1991, c. 176, s. 1; c. 761, s. 50.5; 1993, c. 539, s. 836; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 209, s. 3.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to offenses committed on or after that date, substituted "three years" for "one year" in subdivision (a)(2).

§§ 113-141 through 113-145: Reserved for future codification purposes.

Article 13A.

Clean Water Management Trust Fund.

§ 113-145.1. Purpose.

The General Assembly recognizes that a critical need exists in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted. The task of cleaning up polluted waters and protecting the State's water resources is multifaceted and requires different approaches that take into account the problems, the type of pollution, the geographical area, and the recognition that the hydrological and ecological values of each resource sought to be upgraded, conserved, and protected are unique.

It is the intent of the General Assembly that moneys from the Fund created under this Article shall be used to help finance projects that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and conserving unpolluted surface waters, including urban drinking water supplies. It is the further intent of the General Assembly that moneys from the Fund also be used to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. While the purpose of this Article is to focus on the cleanup and prevention of pollution of the State's surface waters and the establishment of a network of riparian buffers and greenways, the General Assembly believes that the results of these efforts will also be beneficial to wildlife and marine fisheries habitats. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 27.6(e), made this article effective June 30, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 113-145.2. Definitions.

As used in this Article:

(1) Council. — The advisory council for the Clean Water Management Trust Fund.

(2) Economically Distressed Units of Local Government. — Counties designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A and any cities located in those counties.

(3) Fund. — The Clean Water Management Trust Fund created pursuant to this Article.

(4) Land. — Real property and any interest in, easement in, or restriction on real property.

(5) Trustees. — The trustees of the Clean Water Management Trust Fund. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

§ 113-145.3. Clean Water Management Trust Fund: established.

(a) Fund Established. — There is established a Clean Water Management Trust Fund in the State Treasurer's Office that shall be used to finance projects to clean up or prevent surface water pollution in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. — The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. — Moneys from the Fund may be used for any of the following purposes:

(1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.

(2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and urban drinking water supplies.

(3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.

(4) To restore previously degraded lands to reestablish their ability to protect water quality.

(5) To repair failing waste treatment systems if: (i) an application has first been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and the application was denied during the latest review cycle; (ii) the repair is a reasonable remedy for resolving an existing waste treatment problem; and (iii) the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community. Priority shall be given to economically distressed units of local government.

(6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand

waste treatment systems if the system is being expanded as a remedy to eliminate failing septic tank systems or illegal drainage connections. Priority shall be given to economically distressed units of local government.

(7) To improve stormwater controls and management practices.

(8) To facilitate planning that targets reductions in surface water pollution.

(9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. — No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum of eight hundred fifty thousand dollars ($850,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

§ 113-145.4. Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement.

(a) Eligible Grant Applicants. — Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

(1) A State agency.

(2) A local government or other political subdivision of the State or a combination of such entities.

(3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(b) Grant Matching Requirement. — The Board of Trustees shall establish matching requirements for grants awarded under this Article. The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) Grants Not Available to Satisfy Compensatory Mitigation Requirements. — No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S.143-214.11. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

§ 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.

(a) Board of Trustees Established. — There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be independent, but for administrative purposes shall be located under the Department of Environment, Health, and Natural Resources.

(b) Membership. — The Clean Water Management Trust Fund Board of Trustees shall be composed of 18 members. Six members shall be appointed by the Governor, six by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and six by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution.

Persons appointed shall be knowledgeable in one of the following areas:

(1) Acquisition and management of natural areas.
(2) Conservation and restoration of water quality.
(3) Wildlife and fisheries habitats and resources.
(4) Environmental management.

(c) Initial Appointments. — Each appointing officer shall designate two of the officer's initial appointments to serve two-year terms, two to serve four-year terms, and two to serve six-year terms. Thereafter, all appointments shall be for four years, subject to reappointment. All initial appointments shall be made on or before January 1, 1997. The Governor shall appoint one Trustee to serve as Chair of the Board.

(d) Vacancies. — If a vacancy occurs, other than by the expiration of term, of a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies shall be filled by the appointing official in the original manner.

(e) Frequency of Meetings. — The Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(f) Per Diem and Expenses. — The Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

(g) Meeting Facilities. — The Secretary of the Department of Environment, Health, and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and duties.

(a) Allocate Grant Funds. — The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. — The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

(1) The significant enhancement and conservation of water quality in the State.
(2) The objectives of the basinwide management plans for the State's river basins and watersheds.
(3) The promotion of regional integrated ecological networks insofar as they affect water quality.

(4) The specific areas targeted as being environmentally sensitive.
(5) The geographic distribution of funds as appropriate.
(6) The preservation of water resources with significant recreational or economic value and uses.
(7) The development of a network of riparian buffer- greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

(c) Develop Additional Guidelines. — The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. — The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. — The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. — The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. — The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. — The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) The Chair of the Board of Trustees of the Clean Water Management Trust Fund shall report to the Environmental Review Commission beginning November 1, 1996, and annually thereafter on implementation of this section. A written copy of the report shall also be sent to the Fiscal Research Division of the General Assembly beginning November 1, 1996, and annually thereafter on implementation of this section. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a), (c).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 27.6(c), was codified as subsection (i) of this section at the direction of the Revisor of Statutes.

§ 113-145.7. Clean Water Management Trust Fund: Executive Director and staff.

The Clean Water Management Trust Fund Board of Trustees, as soon as practicable after its organization, shall select and appoint a competent person in accordance with this section as Executive Director of the Clean Water Management Trust Fund Board of Trustees. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Trustees and shall serve as the chief administrative officer of the Trustees. Subject to the approval of the Trustees and the Director of the

Budget, the Executive Director may employ such clerical and other assistants as may be deemed necessary.

The person selected as Executive Director shall have had training and experience in conservation, protection, and management of surface water resources. The salary of the Executive Director shall be fixed by the Trustees, and the Executive Director shall be allowed travel and subsistence expenses in accordance with G.S. 138-6. The Executive Director's salary and expenses shall be paid from the Fund. The term of office of the Executive Director shall be at the pleasure of the Trustees. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

§ 113-145.8. Clean Water Management Trust Fund: Advisory Council.

There is established the Clean Water Management Trust Fund Advisory Council. The Council shall advise the Trustees with regard to allocations made from the Fund, and other issues as requested by the Trustees. The Council shall be composed of the following or its designees:

(1) Commissioner of Agriculture.
(2) Chair of the Wildlife Resources Commission.
(3) Secretary of the Department of Environment, Health, and Natural Resources.
(4) Secretary of the Department of Commerce. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a).)

§§ 113-145.9 through 113-150: Reserved for future codification purposes.

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ 113-151.1. License agents.

Editor's Note. — Session Laws 1995, c. 507, s. 26.5(e) provides that the Marine Fisheries Commission may adopt temporary and permanent rules to authorize the use of no more than three crab pots for noncommercial purposes by a vessel that is not licensed so long as the owner of the vessel does not hold any fisheries licenses and any crabs taken are not sold, offered for sale, bartered, or exchanged for merchandise.

§ 113-152. Consolidated license for vessels, equipment and operations; fees.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 586, s. 1, effective June 20, 1996, amended Session Laws 1993, c. 515, s. 8, by deleting the July 1, 1996 expiration date.

Session Laws 1995, c. 507, s. 1.1 provides this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 576, s. 3, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 675, ss. 3, 4, by Session Laws 1993 (Reg. Sess., 1994), c. 770, s. 1, and by Session Laws 1995, c. 507, s. 26.5(a), contains provisions regarding a moratorium on issuance of new licenses and renewal of licenses, with certain exemptions, which was extended to July 30, 1997 by Session Laws

1995, c. 507, s. 26.5(a); consideration of license applications by an Appeals Panel; and a study of the fishery industry.

As amended by Session Laws 1995, c. 507, s. 26.5(d), Session Laws 1993 (Reg. Sess. 1994), c. 576, s. 3, provides in part:

"(c2) During the moratorium, a license required to participate in a fishery regulated by a federal fisheries management plan under G.S. 113-182(b)(3) may only be issued to a person who:

"(1) Held a valid vessel license issued under G.S. 113-152, a valid land or sell license issued under G.S. 113-153, or a combination of the two licenses, during at lease two of the three years immediately preceding ratification;

"(2) Participated in the fishery for which a license or permit is required during at least two of the three years immediately preceding ratification;

"(3) Landed in North Carolina during each year of participation in the fishery the minimum pounds of fish as established by the Commission in duly adopted rules."

§ 113-153. Land or sell license; vessels fishing beyond territorial waters.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 586, s. 1, effective June 20, 1996, amended Session Laws 1993, c. 515, s. 8, by deleting the July 1, 1996 expiration date.

§ 113-154. Shellfish license.

(a) It is unlawful for an individual to take shellfish from the public or private grounds of North Carolina by mechanical means or for commercial use by any means without having first procured an individual shellfish license.

(b) It is unlawful for any individual to take shellfish for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid shellfish license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken shellfish to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Shellfish licenses are issued annually on a fiscal year basis upon payment of a fee of seven dollars and fifty cents ($7.50) upon proof that the license applicant is a resident of North Carolina: Provided, that persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's shellfish license.

(c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder under G.S. 113-202.1 or G.S. 113-202.2, or a franchise holder under G.S. 113-206 who purchases an individual shellfish license under this section, may employ persons who do not possess individual shellfish licenses, provided that the employees have written proof of employment on hand, if requested for inspection by a Marine Fisheries officer to verify lawful activities on the lease. The written proof of employment shall include: (i) the name and address of the leaseholder or franchise holder; (ii) the lease or franchise number; (iii) the date of issuance and expiration of the lease or franchise; and (iv) the employee's name and address. The proof of employment shall be signed and dated by the leaseholder or franchise holder.

(d) In the event an individual possessing a shellfish license changes his name or address or receives one erroneous in this respect, he must within 30 days surrender the license for one bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(e) It is unlawful for an individual issued a shellfish license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Marine Fisheries Commission. (1903, c. 516, s. 6; Rev., s. 2386; C.S., s. 1934; 1953, c. 1134; 1955, c. 888, s. 1; 1965, c. 957, s. 2; 1967, c. 444, s. 3; 1983, c. 570, ss. 8, 9, 16; 1987, c. 641, s. 5; 1991, c. 545, s. 2; 1993, c. 466, s. 4; 1993 (Reg. Sess., 1994), c. 576, s. 2; 1995, c. 507, s. 26.5(b); 1995 (Reg. Sess., 1996), c. 633, s. 1(a).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.16, as amended by Session Laws 1995, c. 324, s. 26.8C(a), establishes the Blue Ribbon Advisory Council on Oysters, to assist the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture in an advisory capacity and to study and make recommendations relating to the oyster resource. The Advisory Council shall complete its study and make a final report on or before June 30, 1997.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (c1).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subsection (c1).

§ 113-154.1. Endorsement to sell fish.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 586, s. 1, effective June 20, 1996, amended Session Laws 1993, c. 515, s. 8, by deleting the July 1, 1996 expiration date.

§ 113-156. Licenses for fish dealers.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 586, s. 1, effective June 20, 1996, amended Session Laws 1993, c. 515, s. 8, by deleting the July 1, 1996 expiration date.

§ 113-161. Nonresidents reciprocal agreements.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 586, s. 1, effective June 20, 1996, amended Session Laws 1993, c. 515, s. 8, by deleting the July 1, 1996 expiration date.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-182. Regulation of fishing and fisheries.

(a) The Marine Fisheries Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

(1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;

(2) Seasons for taking fish;

(3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C.S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1961, c. 1189, s. 1; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1995, c. 507, s. 26.5(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, added subdivision (b)(3).

§ 113-190. Fishery Resource Grant Program.

(a) Creation. — There is created within the Sea Grant College Program at The University of North Carolina, the Fishery Resource Grant Program. The purpose of the program is to work within priorities established by the Marine Fisheries Commission to protect and enhance the State's coastal fishery resources through individual grants in the following areas:

(1) New fisheries equipment or gear;

(2) Environmental pilot studies, including water quality and fisheries habitat;
(3) Aquaculture or mariculture of marine dependent species; or
(4) Seafood technology.

(b) Annual Establishment of Priorities. — The Commission shall, in cooperation with fishermen, the Division of Marine Fisheries, and the Sea Grant College Program, establish priorities effective July 1 of each year for the grant program. The adoption of priorities by the Commission shall not be considered rule making within the meaning of the Administrative Procedure Act. The Commission shall provide public notice of its proposed priorities at least 30 days before the Commission meeting prior to a final determination of its priorities for the fiscal year.

(c) Procedure to Solicit Proposals. — Following the establishment of priorities by the Commission, Sea Grant shall hold workshops within each of the coastal regions to solicit applications and to assist persons involved in fishing industries in writing proposals. For purposes of this act, the term "fishing industry" includes persons involved in: (i) commercial or recreational fishing; (ii) aquaculture or mariculture; or (iii) handling fish products such as seafood dealers or processors. Sea Grant shall encourage preproposal conferences between individuals in the fisheries industry and those with technical or research background to work as partners in developing and writing the proposals and in writing final report results. If the grants approved by the Commission do not utilize all available funds, Sea Grant may advertise and solicit additional applications during the applicable fiscal year.

(d) Application for Grant Program. — An applicant may apply for grant funds to the Sea Grant College Program. For purposes of this subsection, every proposal shall include substantial involvement of active North Carolina persons involved in a fishing industry. A proposal generated by a person not involved in a fishing industry may be eligible for funding only if the proposal includes written endorsements supporting the project from persons or organizations representing fishing industries. An application shall include, but not be limited to, the following:
(1) Name and address of the primary applicant;
(2) List of licenses issued to the applicant by the State of North Carolina;
(3) A description of the project;
(4) A detailed statement of the projected costs of the project including the cost to plan and design the project;
(5) An explanation of how the project will enhance the fishery resource;
(6) List of names and addresses of any other persons who will participate in the project; and
(7) Any other information necessary to make a recommendation on the application.

(e) Review Process. — Sea Grant shall conduct an anonymous peer review of all applications for fisheries grants. At least one of the peer reviewers shall be a person involved in a fishing industry. Applications shall be confidential and shall not be defined as a public record as defined under G.S. 132-1 until after the closing date for submission of applications. Following the review of all proposals, Sea Grant shall rank proposals in order of priority and shall present the recommendations to the Commission. Any criterion used by Sea

Grant in ranking proposals shall not require rule making within the meaning of the Administrative Procedure Act, but such criteria shall be public records as defined in G.S. 132-1.

(f) Award Process. — The Commission shall review the ranking of proposals, and if consistent with the priority rankings established under subsection (e) of this section, shall fund those proposals. Applications that include involvement by fishermen in the project shall be accorded a priority in funding by the Commission. Following approval by the Commission, the Sea Grant College Program shall award the grants. To the extent practicable, the Sea Grant College Program shall distribute grant funding among the northern, southern, central, and Pamlico coastal regions.

(g) Restrictions on Grants. — No member of the Commission may benefit financially from a grant. If a grant recipient from a prior year has failed to perform a grant project to the satisfaction of the Sea Grant College Program or the Commission, the Sea Grant College Program may decline to fund any new application involving the principal applicant.

(h) Grant Reports and Funding. — Grant recipients shall provide quarterly progress reports to the Sea Grant College Program and shall submit invoices for expenditures for each quarter. Twenty-five percent (25%) of the total grant award shall be held until the grant recipient has completed the project and submitted a final written report. The remainder of the grant award shall be distributed upon approval of each quarterly report and upon verification of the expenditures.

(i) Report on Grant Program. — The Sea Grant College Program shall report on an annual basis to the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture. (1995 (Reg. Sess., 1996), c. 633, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 633, s. 9, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 633, s. 6, provides: "Notwithstanding subsection (b) of Section 2 of this act, the Marine Fisheries Commission may establish priorities by September 1, 1996, for the 1996-97 fiscal year."

ARTICLE 16.

Cultivation of Shellfish.

§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

Local Modification. — Carteret (As to Portsmouth Island and Core Banks): 1995 (Reg. Sess., 1996), c. 547; c. 633, s. 1(b); Core Sound: 1996, 2nd Ex. Sess., c. 18, s. 27.33. The local modification for Core Sound: 1993, c. 44, s. 1 should be stricken from the main pamphlet as it has expired.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 547, s. 4, provides: "The Joint Legislative Commission on Seafood and Aquaculture shall study the shellfish lease program and shall consider the following issues: (i) preservation of areas used substantially by commercial and recreational fishermen; (ii) establishment of a maximum percentage of available water body for leases; (iii) restrictions on shellfish lease sizes and whether leases may be contiguous; (iv) production requirements; (v) evaluation of profit-ability of leases after period of time; and (vi) any other related issues. The Joint Legislative Commission shall report its findings and recommendations to the 1997 General Assembly."

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.

CASE NOTES

Navigable Waters. — If a body of water in its natural condition can be navigated by watercraft, it is navigable in fact and, therefore, navigable in law, even if it has not been used for such purpose. Lands lying beneath such waters that are navigable in law are the subject of the public trust doctrine. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Cited in Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

(a) Except as hereinafter provided before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department. Granting of the State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The Department shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(c1) The Coastal Resources Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider:

(1) The size of the development;

(2) The impact of the development on areas of environmental concern;
(3) How often the class of development is carried out;
(4) The need for on-site oversight of the development; and
(5) The need for public review and comment on individual development projects.

General permits may be issued by the Commission as rules under the provisions of G.S. 113A-107. Individual development carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of this section. The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues. The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit.

(d) An applicant for a permit, other than an emergency permit, shall send a copy of his application to the owner of each tract of riparian property that adjoins that of the applicant. The copy shall be served by certified mail or, if the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, by publication in accordance with the rules of the Commission. An owner may file written objections to the permit with the Department for 30 days after he is served with a copy of the application. In the case of a special emergency dredge or fill permit the applicant must certify that he took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in (e) of this section, upon the express understanding from the applicant that he will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall coordinate the issuance of permits under this section and G.S. 113A-118 to avoid duplication and to create a single, expedited permitting process. The Coastal Resources Commission may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act on an application for permit within 75 days after the completed application is filed, provided the Department may extend such deadline by not more than an additional 75 days if necessary properly to consider the application, except for applications for a special emergency permit, in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may elaborate by rule upon what conditions the Secretary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit.

(g) G.S. 113A-122 applies to an appeal of a permit decision under subsection (f).

(h) Repealed by Session Laws 1987, c. 827, s. 105.

(h1) All construction and maintenance dredgings of beach-quality sand may be placed on the downdrift beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift beaches.

(i) Subject to subsection (h1) of this section, all materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. A notice to cease shall be served personally or by certified mail.

(*l*) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and the work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the Department and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130A-346 through G.S. 130A-349. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

(2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass *(Spartina alterniflora)*, Black Needlerush

(Juncus roemerianus), Glasswort *(Salicornia spp.)*, Salt Grass *(Distichlis spicata)*, Sea Lavender *(Limonium spp.)*, Bulrush *(Scirpus spp.)*, Saw Grass *(Cladium jamaicense)*, Cattail *(Typha spp.)*, Salt-Meadow Grass *(Spartina patens)*, and Salt Reed-Grass *(Spartina cynosuroides)*. (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3; 1975, c. 456, ss. 1-7; 1977, c. 771, s. 4; 1979, c. 253, ss. 1, 2; 1983, c. 258, ss. 1-3; c. 442, s. 2; 1987, c. 827, s. 105; 1989, c. 727, s. 107; 1993, c. 539, s. 844; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 777, s. 6(a), (b); 1995, c. 509, s. 55.1(a)-(c).)

Effect of Amendments. — Session Laws 1995, c. 509, s. 55.1(a), (b), and (c), effective July 29, 1995, substituted "State-owned" for "state-owned" in the catchline and in subsections (a) and (m).

ARTICLE 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

§ 113-271. Hook-and-line licenses in inland fishing waters.

(a) All the hook-and-line fishing licenses set forth in subsection (b) of this section entitle the holder to fish with hook and line in the inland and joint waters of the State, but not in public mountain trout waters. The licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section further entitle the holder to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4, effective July 1, 1995.

(c) Repealed by Session Law 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Fishing License — $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Fishing License — $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Fishing License — $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the holder.

(4) Resident County Fishing License — $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the license holder.

(5) Nonresident State Fishing License — $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Fishing Licenses. Short-term fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term fishing licenses issued by the Wildlife Resources Commission are:

a. Resident one day — $5.00. This license shall be issued only to a resident of the State.

b. Nonresident one day — $10.00. This license shall be issued only to a nonresident of the State.

c. Nonresident three day — $15.00. This license shall be issued only to a nonresident of the State.

(7) Lifetime Fishing License for the Legally Blind — No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.

(8) Adult Care Home Resident Fishing License — No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.

(9) Special Guest Fishing License — $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles persons to fish from the shore or any pier or dock originating from the property without any additional fishing license. This license is applicable only to private property and private docks and piers and is not valid for any public property, pier, or dock nor for any private property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9; 1973, c. 476, s. 143; c. 504; 1975, c. 197, s. 15; 1979, c. 737, ss. 1, 2; c. 748, s. 6; c. 830, s. 1; 1979, 2nd Sess., c. 1178, ss. 3, 5; 1981, c. 482, s. 5; 1981 (Reg. Sess., 1982), c. 1201, s. 5; 1983, c. 140, s. 6; 1987, c. 156, ss. 8, 9; c. 827, s. 98; 1989 (Reg. Sess., 1990), c. 909, s. 2; c. 926; 1993 (Reg. Sess., 1994), c. 684, s. 4; 1995, c. 535, s. 6.1.)

Local Modification. — Transylvania: 1995, c. 314, s. 1.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Law 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. —

The 1995 amendment, effective October 1, 1995, in subdivision (d)(8), substituted "Adult Care Home" for "Rest Home" in the catchline, substituted "an adult care home" for "a domiciliary home" twice, and substituted "the individual" for "he".

§ 113-272.2. Special device licenses.

(a) Except as otherwise specifically provided by law, no one may fish in inland fishing waters with any special device without having first procured a current and valid special device license. Special devices are all devices used in fishing other than hook and line.

(b) All special device licenses are annual licenses issued beginning July 1 each year running until the following June 30.

(c) The special device licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Noncommercial Special Device License — $10.00. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with no more than three special devices authorized by the rules of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the license to specified registered equipment, require tagging of items of equipment, charge up to one dollar ($1.00) per tag issued, and require periodic catch data reports. Unless specifically prohibited, nongame fish lawfully taken under this license may be sold.

(1a) Resident Commercial Special Device License — $100.00. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with four or more special devices authorized by the rules of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the license to specified registered equipment, require tagging of items of equipment, charge up to one dollar ($1.00) per tag issued, and require periodic catch data reports. Nongame fish lawfully taken under this license may be sold.

(2) Nonresident Noncommercial Special Device License — $50.00. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid for use only by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1) of this subsection.

(2a) Nonresident Commercial Special Device License — $100.00 or the amount the nonresident's state of residence charges a North Carolina resident to engage in the activity authorized by this license, whichever is higher. Except as rules of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid only for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1a) of this subsection.

(3), (4) Repealed by Session Laws 1987, c. 156, s. 11.

(d) Repealed by Session Laws 1995, c. 36, s. 2, effective July 1, 1995. (1979, c. 830, s. 1; 1981, c. 620, s. 2; 1981 (Reg. Sess., 1982), c. 1201, s. 7; 1983, c. 140, s. 8; 1987, c. 156, ss. 11, 12; c. 827, s. 98; 1993 (Reg. Sess., 1994), c. 778, s. 1; 1995, c. 36, s. 2.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, repealed subsection (d).

§ 113-275. General provisions respecting licenses and permits.

(a) The Wildlife Resources Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of wildlife resources.

(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife Resources Commission finds that a state has a nonresident license fee related to wildlife resources that exceeds the fee for a comparable nonresident license in North Carolina, the Wildlife Resources Commission may, by resolution in official session, increase the nonresident license fee applicable to citizens of that state to an amount equal to the fee a North Carolina resident is required to pay in that state.

The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article 2 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-59(a), the action of the Wildlife Resources Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Wildlife Resources Commission.

(b) Every license issued under the provisions of this Article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with rules of the Wildlife Resources Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Wildlife Resources Commission to responsible employees or agents.

(b1) No hunting or fishing license issued to a resident under the provisions of G.S. 113-270.1C, 113-270.1D, 113-270.2, 113-270.3, 113-271, or 113-272 becomes invalid for use during the term for which it is issued by reason of a removal of the residence of the licensee to another state.

(c) Every license issued under the provisions of this Article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(c1) Upon receipt of a proper application together with a fee of two dollars ($2.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it.

(d) In implementing the sale and distribution of licenses issued under this Article, the Wildlife Resources Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in rules of the Wildlife Resources Commission in order to be validly required.

(e) Where employees of the Wildlife Resources Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Wildlife Resources Commission without any deduction of the stipulated license agent's fee.

(f) Except as otherwise specifically provided by statute or except as the Wildlife Resources Commission may by rule prescribe to the contrary:

(1) All licenses and permits under this Article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;
(2) All licenses and permits under this Article are nontransferable; and
(3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit — except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferable license or permit for the purpose of circumventing the requirements of this Article.

(h) It is unlawful for any person engaged in regulated operations under this Article to refuse to exhibit or display any required license, permit, or identification upon the request of any employee or agent of the Wildlife Resources Commission or of any officer authorized to enforce the provisions of this Article.

(i) It is unlawful to refuse to comply with any provisions of this Article or of rules and administrative requirements reasonably promulgated under the authority of this Article.

(j) It is a Class 1 misdemeanor for any person:

(1) Knowingly to engage in any activity regulated under this Article with an improper, false, or altered license or permit;
(2) Knowingly to make any application for a license or permit to which he is not entitled;
(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article; or
(4) To counterfeit, alter, or falsify any application, license, or permit under this Article.

(k) A person may use a bow and arrow to take nongame fish in inland and joint fishing waters subject to any applicable rule of the Wildlife Resources Commission regarding seasons, creel limits, type of weapon or subsidiary gear, or any other restriction necessary for the conservation of wildlife under the authority of the following licenses:

(1) All of the combination hunting and fishing licenses issued pursuant to G.S. 113-270.1C;
(2) All of the sportsman licenses issued pursuant to G.S. 113-270.1D;

(3) The hunting licenses issued pursuant to G.S. 113-270.2(c)(1), (2), (3), (5), and (6);
(4) The hook-and-line fishing licenses issued pursuant to G.S. 113-271(d)(1), (2), (3), (4), (5), (6), (8), and (9); and
(5) All of the special device fishing licenses issued pursuant to G.S. 113-272.2. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 1981, c. 620, ss. 7, 8; 1987, c. 745, s. 1; c. 827, s. 98; 1993, c. 539, s. 855; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 684, s. 7; 1995, c. 36, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (k).

ARTICLE 22.

Regulation of Wildlife.

§ 113-291.1. Manner of taking wild animals and wild birds.

(a) Except as otherwise provided, game may only be taken between a half hour before sunrise and a half hour after sunset and only by one or a combination of the following methods:
(1) With a rifle, except that rifles may not be used in taking wild turkeys.
(2) With a shotgun not larger than number 10 gauge.
(3) With a bow and arrow of a type prescribed in the rules of the Wildlife Resources Commission.
(4) With the use of dogs.
(5) By means of falconry.

Fur-bearing animals may be taken at any time during open trapping season with traps authorized under G.S. 113-291.6 and as otherwise authorized pursuant to this subsection, and rabbits may be box-trapped in accordance with rules of the Wildlife Resources Commission. The Wildlife Resources Commission may adopt rules prescribing the manner of taking wild birds and wild animals not classified as game. Use of pistols in taking wildlife is governed by subsection (g). The Wildlife Resources Commission may prescribe the manner of taking wild animals and wild birds on game lands and public hunting grounds.

(b) No wild animals or wild birds may be taken:
(1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:
  a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

b. For transportation incidental to the taking.

(2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute[;] provided, however, that crows may be taken with the aid of electronic calling devices. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait, except as may be otherwise provided by statute. No bear or wild boar may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A of this Subchapter. Any person who unlawfully takes bear or wild boar with the use or aid of any type of bait is punishable as provided by G.S. 113-294(c).

(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

(1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.

(2) Weapon of mass death and destruction as defined in G.S. 14-288.8.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season.

(d) In accordance with governing rules of the Wildlife Resources Commission imposing further restrictions that may be necessary, hunters may conduct field trials with dogs in areas and at times authorized with the use of approved weapons and ammunition. The Wildlife Resources Commission may authorize organized retriever field trials, utilizing domestically raised pheasants or waterfowl, to be held under its permit.

(d1) Except in areas closed to protect sensitive wildlife populations, hunters may train dogs during the closed season:

(1) With the use of approved weapons and ammunition; and

(2) If reasonable control is exercised to prevent the dogs from running unsupervised at large and from killing wild animals and wild birds.

(e) Raccoons and opossum may be taken at night with dogs during seasons set by rules of the Wildlife Resources Commission with the use of artificial lights of a type designed or commonly used to aid in taking raccoon and opossum. No conveyance may be used in taking any raccoon or opossum at night, but incidental transportation of hunters and dogs to and from the site of hunting is permitted. The Wildlife Resources Commission may by rule prescribe restrictions respecting the taking of frogs, or other creatures not classified as wildlife which may be found in areas frequented by game, with the use of an artificial light, and may regulate the shining of lights at night in areas frequented by deer as provided in subsection (e1).

(e1) After hearing sufficient evidence and finding as a fact that an area frequented by deer is subject to substantial unlawful night deer hunting or that residents in the area have been greatly inconvenienced by persons shining lights on deer, the Wildlife Resources Commission may by rule prohibit the intentional sweeping of that area with lights, or the intentional shining of lights on deer, during the period either:

(1) From 11:00 p.m. until one-half hour before sunrise; or
(2) From one-half hour after sunset until one-half hour before sunrise.

Before adopting this rule, the Wildlife Resources Commission must propose it at a public hearing in the area to be closed and seek the reactions of the local inhabitants. The rule must exempt necessary shining of lights by landholders, motorists engaged in normal travel on the highway, and campers and others legitimately in the area, who are not attempting to attract wildlife. This subsection does not limit the right of hunters to take raccoon and opossum with dogs lawfully at night with a light under the terms of subsection (e).

(e2) If the Wildlife Resources Commission has enacted a rule under the authority of subsection (e1) prohibiting the shining of lights from 11:00 p.m. until one-half hour before sunrise in any county or area of a county, the Wildlife Resources Commission is authorized, without holding an additional public hearing, to extend the applicability of that rule to the period one-half hour after sunset to one-half hour before sunrise upon receipt of a resolution from the board of commissioners of the county requesting extension of the period.

(f) To keep North Carolina provisions respecting migratory birds in substantial conformity with applicable federal law and rules, the Wildlife Resources Commission may by rule expand or modify provisions of this Article if necessary to achieve such conformity. In particular, the Commission may prohibit the use of rifles, unplugged shotguns, live decoys, and sinkboxes in the taking of migratory game birds; vary shooting hours; adopt specific distances, not less than 300 yards, hunters must maintain from areas that have been baited, and fix the number of days afterwards during which it is still unlawful to take migratory game birds in the area; and adopt similar provisions with regard to the use of live decoys. In the absence of rules of the Wildlife Resources Commission to the contrary, the rules of the United States Department of the Interior prohibiting the use of rifles, unplugged shotguns, toxic shot and sinkboxes in taking migratory game birds in North Carolina shall apply, and any violation of such federal rules is unlawful.

(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a pistol of .22 caliber with a barrel not less than six inches in length and loaded with long-rifle ammunition. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods.

(g1) The Wildlife Resources Commission may by rule prescribe the types of handguns and handgun ammunition that may be used in taking big game animals other than wild turkey. During the regular gun seasons for taking bear, deer and wild boar these animals may be taken with types of handguns and handgun ammunition that shall be approved for such use by the rules of the Wildlife Resources Commission. The Commission shall not provide any special season for the exclusive use of handguns in taking wildlife.

(h) In the interests of enhancing the enjoyment of sportsmen, and if consistent with conservation objectives, the Wildlife Resources Commission may by rule relax requirements of this section on controlled shooting preserves and in other highly controlled situations.

(i) The intentional destruction or substantial impairment of wildlife nesting or breeding areas or other purposeful acts to render them unfit is unlawful. These prohibitions include cutting down den trees, shooting into nests of wild animals or birds, and despoliation of dens, nests, or rookeries.

(j) It is unlawful to take deer swimming or in water above the knees of the deer. (C.S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, cc. 75, 140; 1971, c. 439, ss. 1-3; c. 899, s. 1; 1973, c. 1096; c. 1262, s. 18; 1975, c. 669; 1977, c. 493; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, ss. 4-6; 1983, c. 137, ss. 1, 2; c. 492; 1985, c. 360; c. 554, ss. 1, 2; 1987, cc. 97, 134, 827, s. 98; 1993, c. 539, s. 862; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 64, s. 1.)

Effect of Amendments. — The 1995 amendment, effective May 3, 1995, in subsection (a) following subdivision (a)(5), added "and as otherwise authorized pursuant to this subsection" to the end of the first sentence, deleted the former second sentence which read "Nongame animals and birds open to hunting may be taken during the hours authorized by rule during any open season by the methods for taking game", and added the present second sentence.

§ 113-291.2. Seasons and bag limits on wild animals and birds; including animals and birds taken in bag; possession and transportation of wildlife after taking.

(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions. Unless modified by rules of the Wildlife Resources Commission, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for migratory game birds in North Carolina must be followed, and a violation of the applicable federal rules is hereby made unlawful. When the applicable federal rules require that the State limit participation in seasons and/or bag limits for migratory game birds, the Wildlife Resources Commission may schedule managed hunts for migratory game birds. Participants in such hunts shall be selected at random by computer from properly licensed applicants. A nonrefundable fee of five dollars ($5.00) shall be required of each applicant to defray the cost of processing the applications.

Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season.

(b) Any individual hunter or trapper who in taking a wild animal or bird has wounded or otherwise disabled it must make a reasonable effort to capture and kill the animal or bird. All animals and birds taken that can be retrieved must be retrieved and counted with respect to any applicable bag limits governing the individual taking the animal or bird.

(c) An individual who has lawfully taken game within applicable bag, possession, and season limits may, after the game is dead, possess and personally transport it for his own use by virtue of his hunting license, and without any additional permit, subject to tagging and reporting requirements that may apply to the fox and big game, as follows:

(1) In an area in which the season is open for the species, the game may be possessed and transported without restriction.

(2) The individual may possess and transport the game lawfully taken on a trip:
  a. To his residence;
  b. To a preservation or processing facility that keeps adequate records as prescribed in G.S. 113-291.3(b)(3) or a licensed taxidermist;
  c. From a place authorized in subparagraph b to his residence.

(3) The individual may possess the game indefinitely at his residence, and may there accumulate lawfully-acquired game up to the greater of:
  a. The applicable possession limit for each species; or
  b. One half of the applicable season limit for each species.

The above subdivisions apply to an individual hunter under 16 years of age covered by the license issued to his parent or guardian, if he is using that license, or by the license of an adult accompanying him. An individual who has lawfully taken game as a landholder without a license may possess and transport the dead game, taken within applicable bag, possession, and season limits, to his residence. He may indefinitely retain possession of such game, within aggregate possession limits for the species in question, in his residence.

(d) Except in the situations specifically provided for above, the Wildlife Resources Commission may by rule impose reporting, permit, and tagging requirements that may be necessary upon persons:

(1) Possessing dead wildlife taken in open season after the close of that season.

(2) Transporting dead wildlife from an area having an open season to an area with a closed season.

(3) Transporting dead wildlife lawfully taken in another state into this State.

(4) Possessing dead wildlife after such transportation.
The Wildlife Resources Commission in its discretion may substitute written declarations to be filed with agents of the Commission for permit and tagging requirements.

(e) Upon application of any landholder or agent of a landholder accompanied by a fee of fifty dollars ($50.00), the Executive Director may require a survey of the deer population on the land of such landholder. If as a result of the survey it is determined that there is an overpopulation of deer in relation to the carrying capacity of the land, that the herd is substantially dependent on such land for its food and cover, and that the imbalance in the deer population is not readily correctable by an either-sex deer season of reasonable length, the Executive Director may issue to such landholder or agent a number of special antlerless deer tags that in the judgment of the Executive Director is sufficient to correct or alleviate the population imbalance. Subject to applicable hunting license requirements, the special deer tags may be used by any person or persons selected by the landholder or his agent as authority to take antlerless deer, including male deer with "buttons" or spikes not readily visible, on the tract of land concerned during any established deer hunting season. Each antlerless deer killed shall be affixed immediately with a special antlerless deer tag and shall be reported immediately in the wildlife cooperator tagging book supplied with the special antlerless deer tags. This tagging book and any unused tags shall be returned to the Commission within 15 days of the close of the season. Antlerless deer taken under this program and tagged with the special antlerless tags provided shall not count as part of the daily bag, possession, and season limits of the person taking the deer. (1935, c. 486, ss. 16, 17; 1949, c. 1205, s. 1; 1973, c. 1262, s. 18; 1977, c. 499, s. 1; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 7; 1981, c. 681, s. 1; 1987, c. 38; c. 827, s. 98; 1989, c. 642, s. 2; 1995, c. 181, s. 1.)

Local Modification. — Anson County: 1995, c. 55, s. 1; Beaufort: 1995 (Reg. Sess., 1996), c. 630, s. 1 (expires June 30, 1998); Hyde: 1995 (Reg. Sess., 1996), c. 630, s. 1 (expires June 30, 1998); Pamlico: 1995 (Reg. Sess., 1996), c. 630, s. 1 (expires June 30, 1998).

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in the third sentence deleted "and bag, possession and season limits" following "requirements" and substituted "any established deer hunting season" for "such period of time as shall be prescribed by the Executive Director beginning after November 1 and ending no later than the close of the male deer season in the locality" at the end of the sentence; deleted "in addition to the required big game tag" following "antlerless deer tag" in the fourth sentence; and substituted "Antlerless deer taken under this program and tagged with the special antlerless tags provided shall not" for "Each such deer shall" at the beginning of the last sentence.

§ 113-291.4A. Open seasons for taking foxes with firearms.

(a) There is an open season for the taking of foxes with firearms in all areas of the State east of Interstate Highway 77 and in Mitchell and Caldwell Counties from the beginning of the season established by the Wildlife Resources Commission for the taking of rabbits and quail through January 1 of each year. The selling, buying, or possessing for sale of any fox or fox part taken pursuant to this subsection is prohibited, and is punishable as provided by G.S. 113-294(a) or (k).

(b) The Wildlife Resources Commission shall establish appropriate bag and season limits that may be imposed upon the taking of foxes pursuant to this act, and may make reasonable rules governing the possession of foxes killed by motor vehicles or other accidental means. (1989, c. 616, s. 1; 1989 (Reg. Sess., 1990), c. 811; 1995, c. 32, s. 1.)

Effect of Amendments. — The 1995 amendment, effective April 12, 1995, substituted "Mitchell and Caldwell Counties" for "Mitchell County" in subsection (a).

§ 113-291.6. Regulation of trapping.

Editor's Note. —

Session Laws 1991, c. 1044, s. 69, was amended by Session Laws 1993, c. 561, s. 111, by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.3(a) and (b), by Session Laws 1995, c. 507, s. 26.6(a) and (b), and by Session Laws 1995 (Reg. Sess., 1996), c. 18, s. 27.15(a), (b), and (c) to include Anson, Carteret, Chatham, Chowan, Craven, Cumberland, Duplin, Edgecombe, Franklin, Greene, Granville, Halifax, Harnett, Hertford, Johnston, Jones, Lee, Lenior, Lincoln, Martin, Nash, Onslow, Pamlico, Pitt, Scotland, Vance, Warren, Washington, Wayne, and Wilson counties in the program established by that act, to require the Wildlife Resources Commission to prepare a plan to implement a statewide program to control beaver damage on private and public lands, and to extend the expiration date thereof to June 30, 1997. Session Laws 1995, c. 437, s. 5, extended the expiration date to July 21, 1995; Session Laws 1995, c. 467, s. 4, extended the expiration date to July 28, 1995; and Session Laws 1995, c. 507, s. 26.6(c), repealed Session Laws 1995, c. 358, s. 7, which would have extended the expiration date to July 14, 1995.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

§ 113-291.9. Taking of beaver.

(a) Notwithstanding any other law, there is an open season for taking beaver with firearms during any open season for the taking of wild animals, provided that permission has been obtained from the owner or lessee of the land on which the beaver is being taken.

(b) Notwithstanding any other law, it is lawful to use or sell beaver parts taken under a depredation permit issued by the Wildlife Resources Commission.

(c) Notwithstanding G.S. 113-291.6(d) or any other law, it is lawful to set traps number 330 of the connibear type or size, if at least one-half of the trap is covered by water, when trapping beaver during the season for trapping beaver as established by the Wildlife Resources Commission.

(d) Notwithstanding G.S. 113-291.1(b)(2) or any other law, it is lawful to use snares when trapping beaver during the season for trapping beaver as established by the Wildlife Resources Commission.

(e) Repealed by Session Laws 1993, c. 33, s. 1, effective April 26, 1993.

(f) Notwithstanding any other provision of law, landowners whose property is or has been damaged or destroyed by beaver may take beaver on their property by any lawful method without obtaining a depredation permit from the Wildlife Resources Commission, and may obtain assistance from other persons in taking the depredating beaver by giving those persons permission to take beaver on the landowner's property.

(g) This section shall not apply to Buncombe, Madison, McDowell, or Yancey County. (1991, c. 483, s. 3; 1993, c. 33, s. 1; 1995, c. 509, s. 56.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "County" for "Counties" in subsection (g).

§ 113-294. Specific violations.

(a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(b) Any person who unlawfully sells, possesses for sale, or buys any deer or wild turkey is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(c) Any person who unlawfully takes, possesses, or transports any wild turkey is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(c1) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any bear or bear part is guilty of a Class 1 misdemeanor, punishable by a fine of not less than two thousand dollars ($2,000) in addition to such other punishment prescribed for the offense in question. Each of the acts specified shall constitute a separate offense.

(c2) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any cougar (Felis concolor) is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(d) Any person who unlawfully takes, possesses, or transports any deer is guilty of a Class 3 misdemeanor, punishable by a fine of not less than one hundred dollars ($100.00) in addition to such other punishment prescribed for the offense in question.

(e) Any person who unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver, or violates any rule of the Wildlife Resources Commission adopted to protect beavers, is guilty of a Class 3 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(g) Any person who unlawfully takes wild animals or birds from or with the use of a vessel equipped with a motor or with motor attached is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(h) Any person who willfully makes any false or misleading statement in order to secure for himself or another any license, permit, privilege, exemption, or other benefit under this Subchapter to which he or the person in question is not entitled is guilty of a Class 1 misdemeanor.

(i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(j) Any person who unlawfully sells, possesses for sale, or buys a fox, or who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(k) Repealed by Session Laws 1995, c. 209, s. 1, effective October 1, 1995.

(*l*) Any person who unlawfully takes, possesses, transports, sells or buys any bald eagle or golden eagle, alive or dead, or any part, nest or egg of a bald eagle or golden eagle is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(m) Any person who unlawfully takes any migratory game bird with a rifle; or who unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or other bait; or who unlawfully takes any migratory game bird during the closed season or during prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits applicable to any migratory game bird; or who violates any of the migratory game bird permit or tagging rules of the Wildlife Resources Commission is guilty of a Class 2 misdemeanor, punishable by a fine of not less than one hundred dollars ($100.00) in addition to any other punishment prescribed for the offense in question.

(n) Any person who violates any rule of the Commission that restricts access by vehicle on game lands to a person who holds a special vehicular access identification card and permit issued by the Commission to persons who have a handicap that limits physical mobility shall be guilty of a Class 2 misdemeanor and shall be fined not less than one hundred dollars ($100.00) in addition to any other punishment prescribed for the offense. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141; 1963, c. 147; c. 697, ss. 2, 3½; 1965, c. 616; 1967, c. 729; c. 1149, s. 1; 1971, c. 423, s. 1; c. 524; c. 899, s. 2; 1973, c. 677; 1975, c. 216; 1977, c. 705, s. 4; c. 794, s. 2; c. 933, s. 8; 1979, c. 830, s. 1; 1985, c. 306; c. 554, s. 3; 1987, c. 452, s. 4; c. 827, s. 98; 1989, c. 327, s. 2; 1991, c. 366, s. 1; 1993, c. 539, s. 863; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 209, ss. 1, 2.)

Effect of Amendments. — Session Laws 1995, c. 209, ss. 1 and 2, effective October 1, 1995, and applicable to offenses committed on or after that date, substituted "Class 2 misdemeanor" for "Class 3 misdemeanor" in subsections (b), (c), (e), (f), and (m); substituted "punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment" for "unless a greater penalty is" in subsections (b), (c), and (e); substituted "punishable by a fine of not less than two thousand dollars ($2,000) in addition to such other punishment" for "unless a greater penalty is" in subsection (c1); substituted "punishable by a fine of not less than one hundred dollars ($100.00) in addition to such other punishment" for "unless a greater penalty is" in subsection (d); inserted "unlawfully sells, possesses for sale, or buys a fox or who" following "Any person who" in subsection (j); deleted subsection (k) regarding subsequent convictions for fox offenses; in subsection (m) inserted "or who violates any of the migratory game bird permit or tagging rules of the Wildlife Resources Commission" preceding "is guilty of a" and added language beginning "punishable by a fine of not less than" to the end of the subsection; and added subsection (n).

§ 113-297. Method exemptions for disabled persons.

(a) Any person whose physical disability makes it impossible for the person to hunt or fish by conventional methods for one year or more may apply to the Wildlife Resources Commission for a hunting or fishing methods exemption allowing that person to hunt or fish in a manner that would otherwise be prohibited by rules adopted by the Commission. The application shall be accompanied by a signed statement from a physician containing the following information:

(1) The nature of the person's disability;
(2) The necessity of the exemption in order to allow the person to hunt or fish; and
(3) Whether the disability is permanent or temporary and, if temporary, the length of time after which the physician anticipates that the person may be able to hunt or fish without the exemption.

The Wildlife Resources Commission may authorize any reasonable exemption in order to permit a disabled person complying with the requirements of this section to hunt or fish and may issue a permit describing the exemption made in each case. The permit may be permanent or, if the disability is temporary, the permit may coincide with the length of time the signed physician's statement indicates the disability is expected to last. A person issued a permit under this section shall possess the permit while hunting or fishing in the exempted manner.

(b) In addition to providing disabled persons reasonable exemptions from rules adopted by the Wildlife Resources Commission, the Commission may permit a person complying with the application procedure outlined in subsection (a) of this section to use a crossbow or other specially equipped bow if the physician's statement indicates that the person is incapable of arm movement sufficient to operate a longbow, recurve bow, or compound bow. (1995, c. 62, s. 1.)

Editor's Note. — Session Laws 1995, c. 62, s. 2, made this section effective July 1, 1995.

ARTICLE 23A.

Promotion of Coastal Fisheries and Seafood Industry.

§ 113-315.5. Alternative method for collection of assessment.

As an alternate method for the collection of assessments provided for in G.S. 113-315.4, upon the request or petition of the agency and action by the Marine Fisheries Commission as prescribed in G.S. 113-313, the Secretary shall notify, by letter, all persons or firms licensed by the Marine Fisheries Commission to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Secretary who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Secretary or his duly authorized agents. (1967, c. 890, s. 13; 1973, c. 1262, ss. 28, 86; 1977, c. 356; c. 771, s. 4; 1987, c. 641, s. 6; 1995, c. 504, s. 6; c. 509, s. 57.)

Effect of Amendments. — Session Laws 1995, c. 504, s. 6, effective July 28, 1995, substituted "G.S. 113-315.4" for "G.S. 113-310" in the first sentence.

Session Laws 1995, c. 509, s. 57, effective July 29, 1995, substituted "G.S. 113-315.4" for "G.S. 113-310" in the first sentence.

ARTICLE 23C.

North Carolina Seafood Industrial Park Authority.

§ 113-315.25. Creation of Authority; membership; appointment; terms and vacancies; officers; meetings and quorum; compensation.

(a) There is hereby created the North Carolina Seafood Industrial Park Authority. It shall be governed by a board composed of 11 members to be appointed as follows. The Board is hereby designated as the Authority.

(b) Nine members shall be appointed by the Governor.

The initial appointments by the Governor shall be made on or after the date of ratification, four terms to expire July 1, 1981; four terms to expire July 1, 1983; and one term to expire July 1, 1985. Thereafter, at the expiration of each stipulated term of office all appointments shall be for a term of four years. The members of the Authority shall be selected as follows: one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of the village or town where the Seafood Industrial Park is located; one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of the county where the Seafood Industrial Park is located; two members be appointed to the Authority for terms which expire July 1, 1981, from the area of the State where the Seafood Industrial Park is located; five members (two terms expire July 1, 1981; two terms expire July 1, 1983; and one term expires July 1, 1985) be appointed to the Authority who are residents of the State at large and insofar as practicable shall represent all the other sections of the State. At the expiration of the terms for the representatives as stated above the Governor shall use his discretion on reappointments. However, there shall be no less than five members of the Authority from coastal counties and there should be at least one member on the Authority from each village or town in which the Seafood Parks are located. Any vacancy occurring in the membership of the Authority shall be filled by the appointing authority for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

(c) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 36.

(d) The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The terms of subsequent appointees by the General Assembly shall be two years.

(e) The Governor shall annually appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Economic and Community Development or his designee shall serve as secretary of the Authority.

(f) No person shall serve on the Authority for more than two complete consecutive terms.

(g) The Authority shall meet once in each 90 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5 and 138-6. (1979, c. 459, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 36, 37; 1989, c. 751, s. 8(12); 1995, c. 490, s. 47.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subsection (d). For the applicability of this amendment, see editor's note.

ARTICLE 25.

Endangered and Threatened Wildlife and Wildlife Species of Special Concern.

§ 113-333. Powers and duties of the Commission.

(a) In the administration of this Article, the Wildlife Resources Commission shall have the following powers and duties:

(1) To adopt and publish an endangered species list, a threatened species list, and a list of species of special concern, as provided for in G.S. 113-334, identifying each entry by its scientific and common name.

(2) To reconsider and revise the lists from time to time in response to public proposals or as the Commission deems necessary.

(3) To coordinate development and implementation of conservation programs and plans for endangered and threatened species of wild animals and for species of special concern.

(4) To adopt and implement conservation programs for endangered, threatened, and special concern species and to limit,

regulate, or prevent the taking, collection, or sale of protected animals.

(5) To conduct investigations to determine whether a wild animal should be on a protected animal list and to determine the requirements for conservation of protected wild animal species.

(b) Using the procedures set out in Article 2A of Chapter 150B of the General Statutes, the Wildlife Resources Commission shall develop a conservation plan for the recovery of protected wild animal species. In developing a conservation plan for a protected wild animal species, the Wildlife Resources Commission shall consider the range of conservation, protection, and management measures that may be applied to benefit the species and its habitat. The conservation plan shall include a comprehensive analysis of all factors that have been identified as causing the decline of the protected wild animal species and all measures that could be taken to restore the species. The analysis shall consider the costs of measures to protect and restore the species and the impact of those measures on the local economy, units of local government, and the use and development of private property. The analysis shall consider reasonably available options for minimizing the costs and adverse economic impacts of measures to protect and restore the species.

(c) In implementing a conservation plan under this Article, the Wildlife Resources Commission shall not adopt any rule that restricts the use or development of private property. If a conservation plan identifies a conservation, protection, or restoration measure the implementation of which is beyond the scope of the authority of the Wildlife Resources Commission, the Commission may petition the General Assembly, any agency that has regulatory authority to implement the measure, a unit of local government, or any other public or private entity and request the assistance of that agency or entity in implementing the measure. (1987, c. 382, s. 1; 1995, c. 392, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 10, 1995, added the subsection (a) designation; added "and plans" in subdivision (a)(3); substituted "and" for "regulations necessary to" following "To adopt" in subdivision (a)(4); substituted "conservation of protected" for "survival of resident" in subdivision (a)(5); added subsections (b) and (c); and made punctuation changes.

Chapter 113A.

Pollution Control and Environment.

Article 7.

Coastal Area Management.

Part 1. Organization and Goals.

Sec.
113A-103. Definitions.
113A-105. Coastal Resources Advisory Council.

Part 4. Permit Letting and Enforcement.

113A-121.1. Administrative review of permit decisions.

Part 6. Public Beach and Coastal Waterfront Access Program.

Sec.
113A-134.1. Legislative findings.
113A-134.2. Creation of program; administration; purpose; definitions.
113A-134.3. Standards for public access program.

ARTICLE 1.

Environmental Policy Act.

§ 113A-1. Title.

Editor's Note. — Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-2. Purposes.

Editor's Note. — Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

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Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-3. Declaration of State environmental policy.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-4. Cooperation of agencies; reports; availability of information.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-5. Review of agency actions involving major adverse changes or conflicts.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-6. Title.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-7. Other statutory obligations of agencies.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-8. Major development projects.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-9. Definitions.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-10. Provisions supplemental.

Editor's Note. —
Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-50. Short title.

Editor's Note. —
Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

CASE NOTES

Cited in State ex rel. Cobey v. Cook, 118 N.C. App. 70, 453 S.E.2d 553 (1995).

§ 113A-51. Preamble.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-52. Definitions.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-52.01. Applicability of this Article.

Editor's Note. — Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-52.1. Forest Practice Guidelines.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, '133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-54. Powers and duties of the Commission.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-54.1. Approval of erosion control plans.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-54.2. Approval Fees.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-55. Authority of the Secretary.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-

128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-56. Jurisdicition of the Commission.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-57. Mandatory standards for land-disturbing activity.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-58. Enforcement authority of the Commission.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-59. Educational activities.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-60. Local erosion control programs.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

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Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-61. Local approval of erosion control plans.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

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Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-61.1. Inspection of land-disturbing activity; notice of violation.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities-occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-62. Cooperation with the United States.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-63. Financial and other assistance.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

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§ 113A-64. Penalties.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

CASE NOTES

Stated in State ex rel. Cobey v. Cook, 118 N.C. App. 70, 453 S.E.2d 553 (1995).

§ 113A-64.1. Restoration of areas affected by failure to comply.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-65. Injunctive relief.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

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Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

§ 113A-65.1. Stop-work orders.

Editor's Note. —

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

CASE NOTES

The authority to assess civil penalties under § 113A-64 is still necessary to the enforcement of the Sedimentation Pollution Control Act (SPCA). State ex rel. Cobey v. Cook, 118 N.C. App. 70, 453 S.E.2d 553 (1995).

§ 113A-66. Civil relief.

Editor's Note. —
Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1 provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4(a) provides in part that the Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of all facilities in order to implement the repairs and renovations of the Western Justice Academy without being subject to this statute.

CASE NOTES

Punitive Damages Not Recoverable. — The Act only provides for the recovery of "damages caused by the violation," and because punitive damages are designed to punish a party and are not awarded as compensation, they are not recoverable under the Act. Huberth v. Holly, 120 N.C. App. 348, 462 S.E.2d 239 (1995).

ARTICLE 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-100. Short title.

Legal Periodicals. —
For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

CASE NOTES

Cited in Coastal Ready-Mix Concrete Co. v. North Carolina Coastal Resources Comm'n, 116 N.C. App. 119, 446 S.E.2d 823 (1994); Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

§ 113A-103. Definitions.

As used in this Article:

(1) "Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.

(1a) "Boat" means a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.

(2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. The said coastal-area counties and cities shall thereafter transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).

(3) "Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. "Normal conditions" shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:

a. On the Chowan River, its confluence with the Meherrin River;
b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
c. On the Tar River, its confluence with Tranters Creek;
d. On the Neuse River, its confluence with Swift Creek;
e. On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

(4) "Commission" means the Coastal Resources Commission created by G.S. 113A-104.

(4a) "Department" means the Department of Environment, Health, and Natural Resources.

(5)a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).

b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;
2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
3. Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
4. The use of any land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;

5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.
6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;
7. Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;
10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.

c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:

1. The size of the improved or scope of the maintenance work;
2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
3. Whether or not dredging or filling is involved in the maintenance or improvement.

(5a) "Floating structure" means any structure, not a boat, supported by a means of floatation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure shall be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be considered a floating structure when its means of propulsion has been removed or rendered inoperative.

(6) "Key facilities" include the site location and the location of major improvement and major access features of key facilities, and mean:
  a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
    1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
    2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
    3. Major frontage-access streets and highways, both of State concern; and
    4. Major recreational lands and facilities;
  b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.

(7) "Lead regional organizations" means the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.

(8) "Local government" means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.

(9) "Person" means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.

(10) Repealed by Session Laws 1987, c. 827, s. 133.

(11) "Secretary" means the Secretary of Environment, Health, and Natural Resources, except where otherwise specified in this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 913, s. 1; c. 932, s. 2.1; 1987, c. 827, s. 133; 1989, c. 727, s. 126; 1991 (Reg. Sess., 1992), c. 839, ss. 1, 4; 1995, c. 509, s. 58.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "not" for "nor" in subdivision (5)c.3.

§ 113A-105. Coastal Resources Advisory Council.

(a) Creation. — There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) The Coastal Resources Advisory Council shall consist of not more than 45 members appointed or designated as follows:

(1) Two individuals designated by the Secretary from among the employees of the Department;

(1a) The Secretary of Commerce or person designated by the Secretary of Commerce;

(2) The Secretary of Administration or person designated by the Secretary of Administration;

(3) The Secretary of Transportation or person designated by the Secretary of Transportation; and one additional member selected by the Secretary of Transportation from the Department of Transportation;

(4) The State Health Director or the person designated by the State Health Director;

(5) The Commissioner of Agriculture or person designated by the Commissioner of Agriculture;

(6) The Secretary of Cultural Resources or person designated by the Secretary of Cultural Resources;

(7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;

(8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;

(9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;

(10) Three members selected by the Commission who are marine scientists or technologists;

(11) One member who is a local health director selected by the Commission upon the recommendation of the Secretary.

(c) Functions and Duties. — The Advisory Council shall assist the Secretary and the Secretary of Administration in an advisory capacity:

(1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules, and

(2) On such other matters arising under this Article as the Council considers appropriate.

(d) Multiple Offices. — Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. — A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. — The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 249, ss. 1, 2; 1989, c. 727, s. 127; c. 751, s. 8(14a); 1991 (Reg. Sess., 1992), c. 959, s. 26; 1995, c. 123, s. 4; c. 504, s. 7.)

Effect of Amendments. — Session Laws 1995, c. 123, s. 4, effective May 30, 1995, added "or the designee thereof" to the end of subdivision (b)(4).

Session Laws 1995, c. 504, s. 7, effective July 28, 1995, in subsection (b) substituted "45" for "47" in the introductory language, substituted "the" for "his" preceding "Department" in subdivision (1), and rewrote subdivisions (b)(1a) and (b)(2) through (b)(6).

Part 2. Planning Processes.

§ 113A-106. Scope of planning processes.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

Part 3. Areas of Environmental Concern.

§ 113A-113. Areas of environmental concern; in general.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

CASE NOTES

Cited in Coastal Ready-Mix Concrete Co. v. North Carolina Coastal Resources Comm'n, 116 N.C. App. 119, 446 S.E.2d 823 (1994); Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Part 4. Permit Letting and Enforcement.

§ 113A-116. Local government letter of intent.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 113A-118. Permit required.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

CASE NOTES

Quoted in Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

§ 113A-118.1. General permits.

CASE NOTES

Quoted in Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

§ 113A-120. Grant or denial of permits.

CASE NOTES

Cited in Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

§ 113A-121.1. Administrative review of permit decisions.

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

(1) Has alleged that the decision is contrary to a statute or rule;
(2) Is directly affected by the decision; and
(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final Commission decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of a permit. (1981, c. 913, s. 3; 1983, c. 400, ss. 1, 2; 1987, c. 827, s. 139; 1995, c. 409, s. 1.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, in subsection (b) rewrote subdivision (3), and added the last two sentences of the subsection.

CASE NOTES

Section 150B-43 provides no authority for permitting plaintiff to bypass the requirements of this section because by enacting the provisions for administrative review of rules, the legislature wisely determined that the agency itself should have the first opportunity to review the propriety and applicability of its own rules, and so long as the statutory procedures provide an effective means of review of the agency action, the courts will require parties to exhaust their administrative remedies. Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

Final Decision by Coastal Resources Commission Required. — This section requires that a party entitled to its provisions must first challenge a decision to deny or grant a permit by way of a petition to the Coastal Resources Commission, and only after a final decision by the Coastal Resources Commission, may a party invoke the jurisdiction of the superior court. Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

Cited in 115 N.C. App. 349, 444 S.E.2d 636 (1994); Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

§ 113A-123. Judicial review.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

CASE NOTES

Construction With Other Provisions. — This section does not set forth the scope of review but instead provides that judicial review is available pursuant to the provisions of Chapter 150B of the Administrative Procedure Act. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Review of Commission Decisions. — Argument that subsection (a) of this section provides adequate procedure for judicial review of final decisions or orders of Coastal Resources Commission is without merit; adequate procedure for judicial review would exist under subsection (a) only if the scope of review provided therein were at least equal to that provided by Article 4 of chapter 150B. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Quoted in Leeuwenburg v. Waterway Inv. Ltd. Partnership, 115 N.C. App. 541, 445 S.E.2d 614 (1994).

Stated in Flowers v. Blackbeard Sailing Club, Ltd., 115 N.C. App. 349, 444 S.E.2d 636, cert. granted, 337 N.C. 691, 448 S.E.2d 522 (1994), review improvidently granted, 340 N.C. 357, 457 S.E.2d 599 (1995).

§ 113A-125. Transitional provisions.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 113A-126. Injunctive relief and penalties.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

Part 5. Coastal Reserves.

§ 113A-129.1. Legislative findings and purposes.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

CASE NOTES

Public Trust Rights. — The legislature recognized public trust rights in its legislative finding that the undeveloped natural areas on the North Carolina coast are vital to ... public trust rights such as hunting, fishing, navigation and recreation. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Public Uses. — The term "other public uses" means uses in the nature of public trust rights, such as those enumerated in this section and § 113A-129.2(e), thus, the placement of nine wells, together with associated underground utilities and access roads, is not a use in the nature of public trust rights and is prohibited by § 113A-129.2(e). Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Recreational Activities. — Like research and education, hunting, fishing, navigation, and recreation are activities which preserve the land in an undeveloped and natural state; these activities require only a temporary presence on the reserve and do not necessitate alteration of the undeveloped and natural state, they are recreational activities enjoyed by individuals, thus the impact of these activities on the natural resources of the area is minimal. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

§ 113A-129.2. Coastal Reserve Program.

CASE NOTES

Purpose. — The purpose of subsection (e) of this section, as gleaned from § 113A-129.1 and subsection (a) of this section, is to preserve, improve, and maintain undeveloped coastal land and water areas in an undeveloped and natural state so that these areas can serve important public purposes; the primary public purpose or use served by the preservation of these areas in an undeveloped state is research and education. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Public Use. — Like research and education, hunting, fishing, navigation, and recreation are activities which preserve the land in an undeveloped and natural state; these activities require only a temporary presence on the reserve and do not necessitate alteration of the undeveloped and natural state, they are recreational activities enjoyed by individuals, thus the impact of these activities on the natural resources of the area is minimal. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Other Public Uses. — The term "other public uses" means uses in the nature of public trust rights, such as those enumerated in subsection (e) and § 113A-

129.1(a), thus, the placement of nine wells, together with associated underground utilities and access roads, is not a use in the nature of public trust rights and is prohibited by this section. Friends of Hatteras Island Nat'l Historic Maritime Forest Land Trust for Preservation, Inc. v. Coastal Resources Comm'n, 117 N.C. App. 556, 452 S.E.2d 337 (1995).

Part 6. Public Beach and Coastal Waterfront Access Program.

§ 113A-134.1. Legislative findings.

(a) The General Assembly finds that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the coastal waters in North Carolina that have been and will be adversely affected by hazards such as erosion, flooding, and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

(b) The public has traditionally fully enjoyed the State's beaches and coastal waters and public access to and use of the beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to beaches and coastal waters in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. The public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters. (1981, c. 925, s. 1; 1983, c. 751, s. 13; 1989, c. 344; s. 2; 1995, c. 183, s. 2.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, rewrote the catchline for Part 6, which formerly read "Coastal and Estuarine Water Beach Access Program"; added the subsection designations; in the first sentence of subsection (a) substituted "The General Assembly finds" for "It is determined and declared as a matter of legislative findings", substituted "coastal" for "estuarine", and deleted "the coastal and estuarine waters" preceding "hazards"; in subsection (b) deleted "ocean and estuarine" preceding "beaches" four times, inserted "and coastal waters" following "beaches" five times, in the third sentence substituted "General Assembly finds that the" for "ocean and estuarine", in the sixth sentence substituted "The public interest would" for "Public purposes would" and substituted "beaches and coastal waters and by making available additional public parking facilities" for "ocean and estuarine beaches, public parking facilities, or other related public uses"; and made other stylistic changes throughout the section.

Legal Periodicals. —

For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 113A-134.2. Creation of program; administration; purpose; definitions.

(a) There is created the Public Beach and Coastal Waterfront Access Program, to be administered by the Commission and the Department, for the purpose of acquiring, improving, and maintaining property along the Atlantic Ocean and coastal waterways to which the public has rights-of-access or public trust rights as provided in this Part.

(b) As used in this Part:

(1) "Public trust resources" has the same meaning as in G.S. 113-131(e).

(2) "Public trust rights" has the same meaning as in G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, added "definitions" to the end of the catchline; in subsection (a) substituted "Public Beach and Coastal Waterfront" for "Coastal and Estuarine Water Beach", deleted "Coastal Resources" preceding "Commission", substituted "coastal waterways to which the public has rights-of-access or public trust rights" for "estuarine waters", substituted "Part" for "Article"; and rewrote subsection (b).

§ 113A-134.3. Standards for public access program.

(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters. This public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.

(b) To the maximum extent possible, this program shall be coordinated with State and local beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.

(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145; 1989, c. 344, s. 2; c. 727, s. 137; c. 751, s. 13; 1995, c. 183, s. 4.)

Editor's Note. — Session Laws 1995, c. 183, s. 4, amended this section by adding subsection (b) and (c) designations, but failed to add a subsection (a) designation; the subsection (a) designation was added at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, substituted "public" for "beach" in the catchline; in the first paragraph, in the first sentence deleted "Coastal Resource" preceding "Commission" and substituted "coastal beaches and public trust waters" for "ocean and estuarine water beaches", deleted "coastal and estuarine water" preceding "natural hazards", in the last sentence substituted "coastal beaches and public trust" for "areas of the North Carolina Coast and estuarine" and substituted "available" for "already available as of June 30, 1981"; substituted "beach and coastal" for "coastal and estuarine" in the first sentence of subsection (b); in subsection (c) rewrote the first sentence, which formerly read, "These funds may be used to meet matching requirements for federal or other funds", and substituted "Part" for "Article" throughout the subsection; and made other stylistic changes throughout the section.

CASE NOTES

Cited in Coastal Ready-Mix Concrete Co. v. North Carolina Coastal Resources Comm'n, 116 N.C. App. 119, 446 S.E.2d 823 (1994).

ARTICLE 14.

Mountain Ridge Protection.

§ 113A-205. Short title.

Legal Periodicals. —
For comment, "Legal Analysis of the Constitutionality of the Water Supply Watershed Protection Act of 1989 and the Hyde Bill," see 29 Wake Forest L. Rev. 1279 (1994).

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 2.

Energy Crisis Administration.

Sec.
113B-24. Enforcement; penalties for violations.

ARTICLE 2.

Energy Crisis Administration.

§ 113B-24. Enforcement; penalties for violations.

(a) The Attorney General and the law-enforcement authorities of the State and its political subdivisions shall enforce the provisions of this Article and all orders, rules and regulations promulgated pursuant to G.S. 113B-22.

(b) Any person who violates this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 or knowingly or willfully submits false information in any report required herein shall be guilty of a Class 1 misdemeanor.

(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy Policy Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur. (1975, c. 877, s. 4; 1993, c. 539, s. 878; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 878, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 114.

Department of Justice.

Article 3.

Division of Criminal Statistics.

Sec.
114-10. Division of Criminal Statistics.

Article 4.

State Bureau of Investigation.

114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.
114-17.1. [Repealed.]

Sec.
114-19.1. Criminal history background investigations; fees.
114-19.2. Criminal record checks of school personnel.
114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.
114-19.4. Criminal record checks of foster parents.
114-19.5. Criminal record checks of child day care providers.

ARTICLE 1.

Attorney General.

§ 114-2. Duties.

CASE NOTES

Dual Role of Attorney General's Office. — Plaintiff offered no evidence to support the claim that the dual role served by the Attorney General's Office both in representing defendant institution and being legal advisor to State Personnel Commission caused actual bias or unfair prejudice to plaintiff, nor that it created any delay in the disposition of her claims. Dorsey v. UNC-Wilmington, 122 N.C. App. 58, 468 S.E.2d 557 (1996).

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the

volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General.

(6) To promulgate rules and regulations for the administration of this Article. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1; 1995, c. 545, s. 2.)

Editor's Note. — Session Laws 1995, c. 545, s. 3, provides that this act shall be known as the "Amy Jackson Law".

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to all persons convicted on or after that date, and to all persons released from a penal institution on or after that date, inserted "sexual offender registration as provided under Article 27A of Chapter 14 of the General Statutes" in the second sentence of subdivision (2), and added subdivision (6).

ARTICLE 4.

State Bureau of Investigation.

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the

Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice.

(b) The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

(1) All sections of Article 4A of Chapter 14 of the General Statutes;
(2) G.S. 14-277.1;
(3) G.S. 14-277.2;
(4) G.S. 14-283;
(5) G.S. 14-284;
(6) G.S. 14-284.1;
(7) G.S. 14-288.2;
(8) G.S. 14-288.7;
(9) G.S. 14-288.8;
(10) G.S. 14-288.20;
(11) G.S. 14-284.2;

(12) G.S. 14-399(e);
(12a) G.S. 15A-287 and G.S. 15A-288;
(13) G.S. 130A-26.1;
(14) G.S. 143-215.6B;
(15) G.S.143-215.88B; and
(16) G.S. 143-215.114B.

(c) All records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

(d) In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2; 1981, c. 822, s. 2; 1987, c. 858, s. 1; c. 867, s. 3; 1991, c. 725, s. 2; 1993, c. 461, s. 2; 1995, c. 407, s. 2.)

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, added subdivision (b)(12a).

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

§ 114-17.1: Repealed by Session Laws 1995, c. 507, s. 6, effective July 1, 1995.

§ 114-18.1. Information on controlled substances.

CASE NOTES

Cited in State v. Bonds, 120 N.C. App. 546, 463 S.E.2d 298 (1995).

§ 114-19.1. Criminal history background investigations; fees.

(a) When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this section shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

(b) As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court, or for suitability for appointment of a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives.

(c) In providing criminal history record checks, the Department of Justice shall process requests in the following priority order:

(1) Administration of criminal justice record checks,
(2) Mandatory noncriminal justice criminal history record checks,
(3) Voluntary noncriminal justice criminal history record checks.

(d) Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes. (1979, c. 816; 1981, c. 832, s. 1; 1987, c. 867, s. 1; 1995 (Reg. Sess., 1996), c. 606, s. 4.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective January 1, 1997, substituted "Criminal history background investigations; fees" for "Fees for performing certain background investigations" in the catchline, added the subsection (a), (b), and (d) designations, and added subsection (c).

§ 114-19.2. Criminal record checks of school personnel.

(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C.

(b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.

(c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c1) The Department of Justice may provide a criminal record check to the schools within the Department of Human Resources of a person who is employed, applies for employment, or applies to be selected as a volunteer, if the employee or applicant consents to the record check. The Department of Human Resources shall keep all information pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General Statutes.

(d) The Department of Justice shall adopt rules to implement this section. (1991, c. 705, s. 1; 1993, c. 350, s. 1; 1995, c. 373, s. 2.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added the second sentence of subsection (a).

§ 114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.

(a) Authority. — The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.
(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.
(3) Adult care homes licensed under Chapter 131D of the General Statutes.
(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes.
(5) Child placing agencies licensed under Chapter 131D of the General Statutes.
(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.
(7) Hospitals licensed under Chapter 122C of the General Statutes.
(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.
(9) Licensed child day care facilities and registered and nonregistered child day care homes regulated by the State.
(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) Procedure. — A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the individual whose record is checked consents to the record check. The information shall be kept confidential by the entity that receives the information. Upon the disclosure of confidential information under this section by the entity, the Department may refuse to provide further criminal record checks to that entity.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 606, s. 1, effective January 1, 1997.

(d) Foster or Adoptive Parent. — The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. — The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars ($14.00). (1993, c. 403, s. 1; 1995, c. 453, s. 1; 1995 (Reg. Sess., 1996), c. 606, s. 1.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to checks made on or after that date, rewrote the catchline and text of this section.

The 1995 (Reg. Sess., 1996) amendment, effective January 1, 1997, rewrote this section.

§ 114-19.4. Criminal record checks of foster parents.

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the foster parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster parent to be checked. The fingerprints of the foster parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. (1995, c. 507, s. 23.26(c).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 23.26(e), provides that this section is effective January 1, 1996, and is applicable to foster parents providing care on or after that date, to applicants for foster parent licenses on or after that date, and to foster parents whose licenses are being considered for renewal on or after that date.

§ 114-19.5. Criminal record checks of child day care providers.

The Department of Justice may provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child day care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the child day care provider to be checked. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. (1995, c. 507, s. 23.25(b).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

The introductory language of Session Laws 1995, c. 507, s. 23.25(b) states that Article 2 is being amended; however, this section is actually in Article 4.

Session Laws 1995, c. 507, s. 23.25(e), provides that this section is effective January 1, 1996, and is applicable to all child day care providers providing child day care as of that date, to all child day care providers newly hired in child day care employment, and to all child day care providers newly owning or operating child day care, on or after that date.

Chapter 115B.

Tuition Waiver for Senior Citizens.

Sec.
115B-6. Misrepresentation of eligibility.

§ 115B-6. Misrepresentation of eligibility.

Any applicant who willfully misrepresents his eligibility for the tuition benefits provided under this Chapter, or any person who knowingly aids or abets such applicant in misrepresenting his eligibility for such benefits, shall be deemed guilty of a Class 3 misdemeanor. (1975, c. 606, s. 6; 1977, c. 981, s. 6; 1993, c. 539, s. 879; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 879, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 115C.

Elementary and Secondary Education.

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115C-331. [Reserved.]

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115C-391. Corporal punishment, suspension, or expulsion of pupils.

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Article 30.

Financial Powers of the State Board of Education.

115C-418. [Repealed.]

Article 31.

The School Budget and Fiscal Control Act.

Part 2. Budget.

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115C-468. Establishment of fund.
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Article 34A.

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115C-489.2. (For contingent repeal see note) Grants from the Fund.
115C-489.3, 115C-489.4. [Repealed.]

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Article 36.

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115C-513. Special tax for certain merged school administrative units.

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115C-517. Acquisition of sites.
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115C-528. Lease purchase and installment purchase contracts for certain equipment.
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Article 38A.

Public School Building Capital Fund.

115C-546.1. Creation of Fund; administration.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Definitions and Preliminary Provisions.

§ 115C-1. (See editor's note) General and uniform system of schools.

Editor's Note. —
Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Im-

provements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 17.1, provides for supplemental funding in low-wealth counties to allow those counties to enhance the instructional program and student achievement; and provides for the use of the funds, eligibility, allocation of funds, a formula for distribution of supplemental funding, a minimum effort, a nonsupplant requirement, reports by the State Board of Education to the Joint Legislative Education Oversight Committee prior to May 1, 1996, and Department of Revenue reports. Session Laws 1996, Second Extra Session, c. 18, s. 18.2(a) provides that of the funds appropriated to the Aid to Local School Administrative Units, $46,483,809 shall be used for supplemental funds for schools for the 1996-97 fiscal year.

Session Laws 1995, c. 507, s. 17.2, provides for supplemental funding for small school systems; and provides for a nonsupplant requirement, a phase-out provision, definitions, and for reports by the State Board of Education to the Joint Legislative Education Oversight Committee prior to May 1, 1996. Session Laws 1996, Second Extra Session, c. 18, s. 18.2(b) provides that the State Board of Education shall allocate and administer funds appropriated for small school system supplemental funding.

Session Laws 1995, c. 507, s. 17.3, provides for the transfer of funds appropriated to the Office of State Budget and Management, School Technology Reserve, to the State Board of Education, and for the allocation of these funds by the State Board of Education to the credit of local school administrative units.

Session Laws 1996, Second Extra Session, c. 13, s. 1.5, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 4, by deleting the word "and" before subdivision (4), by changing the period at the end of subdivision (4) to a semicolon and adding the word "and", and by adding subdivision (5), which reads "The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1996, Second Extra Session, c. 13, s. 1.6, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 5, by substituting "The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act" for the first sentence of section 5.

CASE NOTES

Adequate Educational Opportunities Not a Fundamental Right. — Statutory provisions contained in this chapter did not provide a basis for relief for plaintiff claiming denial of a fundamental right to adequate educational opportunities where the court found there was no fundamental right under the North Carolina Constitution. Leandro v. State, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

ARTICLE 2.

State Board of Education.

§ 115C-11. Organization and internal procedures of Board.

Editor's Note. — Session Laws 1995, c. 289, s. 1 provides that the General Assembly encourages the State Board of Education to make information regarding gun safety programs for elementary schools available to local boards of education. Further, the State Board of Education is encouraged to promote gun safety education programs that teach children not to touch guns and that are designed to help prevent firearm-related accidents.

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

(1) Financial Powers. — The financial powers of the Board are set forth in Article 30 of this Chapter.

(1a) To Submit a Budget Request to the Director of the Budget. — The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143-6. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.

(2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.

(3), (4) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 1.

(5) Apportionment of Funds. — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. — When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the

amount an accurate attendance record would have justified.

(7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The pay for a substitute shall be fixed by the Board. If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an "A" certificate.

The Board may provide to each local school administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.

(9) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education

Program. The Board shall report to the Joint Legislative Education Oversight Committee and to the General Assembly by December 31, 1991, and by February 1 of each subsequent year on each local board's progress in implementing the Basic Education Program, including the use of State and local funds for the Basic Education Program.

The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.

The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.

c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance.

c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1, effective June 21, 1996.

c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.

c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. — The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(11) Power to Conduct Education Research. — The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes.

(12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. — The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

(13) Power to Purchase Liability Insurance. — The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.

(14) Duty to Provide Personnel Information to Local Boards. — Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or

quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.

(15) Duty to Develop Noncertified Personnel Position Evaluation Descriptions. — The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.

(16) Power with Regard to Salary Schedules. — The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.

b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The

Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

The State Board of Education shall report to the General Assembly, prior to March 31, 1995, and March 31, 1996, on the implementation of this sub-subdivision.

c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.

(17) Power to provide for school transportation programs. The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and regulations shall include, but are not limited to, fund allocations and fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with G.S. 115C-366.

(18) Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information.

a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel. All local school administrative units shall comply with these standards and procedures by the beginning of the 1987-88 school year.

b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network. All local school administrative units shall comply with the requirements of the Uniform Education Reporting System by the beginning of the 1989-90 school year.

c. The State Board of Education shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.

(19) Duty to Identify Required Reports. — Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year.

(20) Duty to Report Appointment of Caretaker Administrators and Boards. — Pursuant to G.S. 120-30.9G the State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(21) Duty to Monitor Acts of School Violence. — The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board.

(22) Duty to Monitor the Decisions of Teachers to Leave the Teaching Profession. — The State Board of Education shall monitor and compile an annual report on the decisions of teachers to leave the teaching profession. The State Board shall adopt standard procedures for each local board of education to use in requesting the information from teachers who are not continuing to work as teachers in the local school administrative unit and shall require each local board of education to report the information to the State Board in a standard format adopted by the State Board.

(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. — The State Board of Education may adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

(24) Duty to Develop Guidelines for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. — The State Board of Education shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee, beginning in December 1996, on the results of this evaluation. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3; 1989, c. 585, s. 1; c. 752, s. 65(c); c. 778, s. 6; 1991, c. 529, s. 3; c. 689, s. 196(b); 1991 (Reg. Sess., 1992), c. 880, s. 3; c. 900, s. 75.1(e); 1993, c. 321, ss. 125, 133(a), 139(b); 1993 (Reg. Sess., 1994), c. 769, ss. 19(a), 19.9; 1995, c. 60, s. 1; c. 324, s. 17.15(a); c. 450, s. 4; c. 509, s. 59; 1995 (Reg. Sess., 1996), c. 716, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.4, 18.28(a).)

Editor's Note. —

Session Laws 1995, c. 6, provides that the State Board of Education shall examine the structure and functions of the State public school system with a view to improving student performance, increasing local flexibility and control, and promoting economy and efficiency, and shall recommend changes in the public school system to the General Assembly, and shall make a preliminary report to the General Assembly prior to May 1, 1995, and a final report prior to March 1, 1996; and that the State Board shall examine the administrative organization of the Department of Public Instruction, propose changes, develop a plan for reducing, eliminating, and/or reorganizing the Department, and make a preliminary report to the General Assembly prior to March 31, 1995, and a final report prior to May 1, 1995; and authorizes the expenditure of funds for outside consultants and assistance to assist the State Board.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds approriated for and activities occuring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 17.15(b), provides for the rate of pay of substitute teachers who are not certified.

Session Laws 1995, c. 450, s. 3, provides that the State Board of Education shall develop a plan for modifying or expanding the Uniform Education Reporting System and shall report to the Joint Legislative Education Oversight Committee by October 15, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Section 6 of Session Laws 1991 (Reg.

Sess., 1992), c. 880 as amended by Session Laws 1993 (Reg. Sess., 1994), c. 677, s. 14, and by Session Laws 1995, c. 507, s. 17.6(b), provides: "The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 18.28(b) — (e), provide: "(b) The first priority for the use of the expansion budget funds appropriated in this act to the Alternative Schools/At-Risk Student allotment shall be to enable every high school in North Carolina to have a uniformed school resource officer. If a local board of education determines after conferring with parents, teachers, and students at a high school that the school does not need a uniformed school resource officer, the local board may use these funds for other purposes. Local boards of education may use any remaining funds for other programs to ensure school safety, prevent violence, and provide alternative learning programs.

"Local boards of education may use funds from the Alternative Schools/At-Risk Student allotment to form partnerships with the Cities In Schools Program or to contract with the Cities In Schools Program for services.

"(c) The State Board of Education shall modify the accounting system for State Aid to Local School Administrative Units so that it can account for State funds expended for school resource officers in each local school administrative unit.

"(d) Local boards of education are encouraged not to use these State funds in the Alternative Schools/At-Risk Student allotment to supplant local funds.

"(e) The State Board of Education may use up to two hundred thousand dollars ($200,000) of the funds in the Alternative Schools/At-Risk Student allotment to implement G.S. 115C-12(24), as enacted by subsection (a) of this section."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 60, s. 1, effective May 2, 1995, added subdivision (23).

Session Laws 1995, c. 324, s. 17.15(a), effective July 1, 1995, in subdivision (8) added "and for Substitute Teachers" in the subdivision heading, in the first paragraph deleted "a minimum of five days per school year term of" following "shall provide", added "in accordance with the provisions of this Chapter", and substituted "sick leave and other teacher absences" for "said sick leave", and added the second sentence of the second paragraph.

Session Laws 1995, c. 450, s. 4, effective July 1, 1995, added subdivision (1a).

Session Laws 1995, c. 509, s. 59, effective July 29, 1995, substituted "board" for "boards" following "each local" near the end of subdivision (22).

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 1, effective June 21, 1996, in subdivision (9)c1., inserted "based on the growth in performance of the students in each school" following "student performance" in the first sentence, and in the second sentence, deleted "demographic, economic, and other" following "take into account", and added "and that the State Board considers relevant to assess the State's efforts to improve the student performance" to the end; deleted subdivision (9)c2., which read "To develop management accountability indicators to measure the efficiency and appropriate use of staff in each school and at the administrative office. Staff development for school administrators shall be a high priority of the Department of Public Instruction"; in subdivision (9)c3., inserted "the growth in" following "measure improvement in" in the first sentence, substituted "The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance" for "The Board may consider for inclusion in the building reports the following criteria: test scores, the success of graduating students in postsecondary institutions, attendance, graduation and dropout rates, the numbers of children enrolled in free lunch or Chapter 1 programs, the education level of the parents of children enrolled in the school, the teaching experience of the school staff, and whether the building has been successful in meeting the goals of the building and systemwide plans developed in accordance with G.S. 115C-238.1 through G.S. 115C-238.6", and, in the next-to-last sentence, inserted "and make public their" following "shall produce", and substituted "1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year" for "1995"; and added subdivision (9)c4.

Session Laws 1996, Second Extra Session, c. 18, ss. 18.4 and 18.28, effective July 1, 1996, in subdivision (8) deleted "assigned to a classroom in kindergarten through third grade" preceding "acts as a substitute," deleted "for that classroom" preceding "the salary of the teacher assistant"; and added subdivision (24).

§ 115C-15. Report on the implementation of the School Improvement and Accountability Act; report on ABC's Plan.

(a) The State Board of Education shall report annually on the first Friday in February on the implementation of the School Improvement and Accountability Act of 1989 [Session Laws 1989, c. 778], to the Joint Legislative Education Oversight Committee, the chairs of the Senate and House of Representatives committees on education, appropriations, and appropriations on education.

(b) Beginning October 15, 1997, and annually thereafter, the State Board of Education shall submit reports to the Joint Legislative Education Oversight Committee regarding the continued implementation of Session Laws 1995 (Reg. Sess., 1996), c. 716. Each report shall include information regarding the composition and activity of assistance teams, those schools that received incentive awards, those schools that were identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility. (1989, c. 778, s. 8; 1993 (Reg. Sess., 1994), c. 677, s. 8; 1995 (Reg. Sess., 1996), c. 716, s. 29(b).)

Cross References. — For provisions regarding development of a pilot program for provision of equipment from other sources, and that the State Board of Education shall evaluate the information provided by participating units and report annually by October 1 to the Joint Legislative Education Oversight Committee, see § 115C-522.1.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 29(b) was codified as subsection (b) of this section at the direction of the Revisor of Statutes.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 29(c), provides: "(c) The State Board of Education shall develop a plan that encourages teachers to seek employment or remain employed in schools that have been identified as low-performing under G.S. 115C-105.30. The plan shall include recommendations regarding additional compensation for (i) newly recruited teachers, and (ii) currently employed teachers whose students have shown significant improvement in academic performance. The State Board shall submit its plan to the Joint Legislative Education Oversight Committee by December 15, 1996."

Session Laws 1995 (Reg. Sess., 1996), c. 716, was an act to implement the recommendation of the Joint Legislative Education Oversight Committee to implement the State Board of Education's ABC's plan in order to establish an accountability model for the public schools to improve student performance and increase local flexibility and control.

§ 115C-16. Authorization for school uniform pilot program.

The State Board of Education may authorize up to five local school administrative units to implement pilot programs in which students are required to wear uniforms in public schools.

Prior to selecting the pilot units, the State Board of Education shall develop guidelines for local boards of education to use when establishing requirements for students to wear uniforms in public schools. In developing these guidelines, the State Board shall consider (i) ways to promote parental and community involvement in the pilot programs, (ii) relevant State and federal constitutional concerns such as freedom of religion and freedom of speech, and (iii) the ability of students to purchase the uniforms.

Local boards in the pilot units shall establish requirements, consistent with the State Board's guidelines, for students enrolled in any of their schools to wear uniforms at school during the regular school day.

No State funds shall be used for the uniforms. (1995, c. 334, s. 1.)

Editor's Note. — Session Laws 1995, c. 334, s. 1 was codified as this section at the direction of the Revisor of Statutes.

§ 115C-17. Rulemaking to implement ABC's Plan.

(a) G.S. 150B-21.2(a)(1) shall not apply to proposed rules adopted by the State Board of Education if the proposed rules are directly related to the implementation of this act.

(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is directly related to the implementation of this act, shall become effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education that is directly related to the implementation of this act, but is not approved by the Rules Review Commission, shall not become effective.

(c) G.S. 150B-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are directly related to the implementation of this act.

(d) The State Board of Education shall determine whether a proposed rule is directly related to this act based upon a finding that there is a rational relationship between the proposed rule and specific provisions of this act. A proposed rule may create, amend, or repeal a rule. The State Board shall indicate in the notice of proposed text that the rule is directly related to the implementation of this act and that the Board is proceeding under the authority granted by this act.

(e) The State Board of Education shall provide written notice to all boards of county commissioners and all local boards of education of proposed rules that are directly related to the implementation of this act and that would affect the expenditures or revenues of a unit of local government under G.S. 150B-21.4(b). The notice shall state that a copy of the fiscal note may be obtained from the State Board. (1995 (Reg. Sess., 1996), c. 716, s. 28)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28 was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28(f), provides that this section does not apply to sections 11-15.1 of that act [G.S. 115C-47, 115C-522, 115C-522.1, 115C-528, and 115C-529].

ARTICLE 3.

Department of Public Instruction.

§ 115C-19. Chief administrative officer of the State Board of Education.

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. As secretary and chief administrative officer of the State Board of Education, the Superintendent manages on a day-to-day basis the administration of the free public school system, subject to the direction, control, and approval of the State Board. Subject to the direction, control, and approval of the State Board of Education, the Superintendent of Public Instruction shall carry out the duties prescribed under G.S. 115C-21. (1955, c. 1372, art. 3, s. 1; 1971, c. 704, s. 5; 1981, c. 423, s. 1; 1987 (Reg. Sess., 1988), c. 1025, s. 4; 1995, c. 72, s. 1.)

Effect of Amendments. — The 1995 amendment, effective May 9, 1995, deleted the former second sentence which read "The Superintendent of Public Instruction shall administer the policies adopted by the State Board of Education", and added the present second and third sentences.

§ 115C-21. Powers and duties generally.

(a) Administrative Duties. — Subject to the direction, control, and approval of the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as the State Board considers necessary for supervision and administration of the public school system. All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction are subject to the approval of the State Board of Education, which may terminate these appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to

include information and statistics of the public schools, with recommendations for their improvement and for changes in the school law.

(4) To have printed and distributed such educational bulletins as are necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.

(5) To manage all those matters relating to the supervision and administration of the public school system that the State Board delegates to the Superintendent of Public Instruction.

(6) To create a special fund within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public education. Effective July 1, 1995, this special fund is transferred to the State Board of Education and shall be administered by the State Board in accordance with G.S. 115C-410.

(7) Repealed by Session Laws 1995, c. 72, s. 2, effective May 9, 1995.

(b) Duties as Secretary to the State Board of Education. — Subject to the direction, control, and approval of the State Board of Education, it shall be the duty of the Superintendent of Public Instruction:

(1) To administer through the Department of Public Instruction, the instructional policies established by the Board.

(1a) Repealed by Session Laws 1995, c. 72, s. 2, effective May 9, 1995.

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board a copy of said minutes.

(9) To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 2, s. 2; art. 3, ss. 3, 4; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, ss. 2, 3; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1; 1985, c. 479, s. 37; 1987 (Reg. Sess., 1988), c. 1025, ss. 5-8; 1989, c. 752, s. 78(a); 1989 (Reg. Sess., 1990), c. 1066, s. 102; 1991 (Reg. Sess., 1992), c. 812, s. 6(g); c. 1044, s. 22(a); 1993, c. 522, s. 1; 1995, c. 72, s. 2.)

Effect of Amendments. — The 1995 amendment, effective May 9, 1995, added "Subject to the direction, control, and approval of the State Board of Education" preceding "it"in subsection (a); rewrote subdivisions (a)(1), (a)(5), (a)(6), and subsection (b); deleted subdivisions (a)(7), regarding matters relating to the provision of staff services and support, and (b)(1a), which read "To administer the funds appropriated for the operations of the State Board of Education and for aid to local school administrative units"; and made stylistic changes.

CASE NOTES

Department of Public Instruction may not take any action contradictory to a properly enacted regulation or policy of the State Board of Education. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996).

ARTICLE 5.

Local Boards of Education.

§ 115C-37. Election of board members.

Local Modification. — Davidson: 1995, c. 300, s. 1; Ashe County Board of Education: 1995, c. 128, s. 1; Chatham County Board of Education: 1995, c. 80, s. 3(f); McDowell County Board of Education: 1995, c. 107, s. 1; Martin County Board of Education: 1995, c. 77, s. 1; Richmond County Board of Education: 1995 (Reg. Sess., 1996), c. 598, s. 1.; Stokes County Board of Education: 1995, c. 66, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 115C-39. Removal of board members; suspension of duties by State Board.

(a) In case the State Board of Education has sufficient evidence that any member of a local board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, the State Board of Education shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education.

(b) In the event the State Board of Education has appointed an interim superintendent under G.S. 115C-105.39 and the State Board determines that the local board of education has failed to cooperate with the interim superintendent, the State Board shall have the authority to suspend any of the powers and duties of the local board and to act on its behalf under G.S. 115C-105.32. (1955, c. 1372, art. 5, s. 13; 1981, c. 423, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 5.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "suspension of duties by State Board" to the catchline; added the subsection (a) designation; in the first sentence of subsection (a), substituted "State Board of Education has" for "Superintendent of Public Instruction shall have", and substituted "the State Board of Education" for "he"; and added subsection (b).

§ 115C-42. Liability insurance and immunity.

CASE NOTES

Motion to Amend Complaint Denied. — Motion to amend complaint denied where plaintiffs knew of the purchase of insurance for nearly two and a half years, and failed to amend their complaint to allege this until the motions hearing when defendants moved to dismiss the action based on plaintiffs' failure to so plead. Gunter v. Anders, 115 N.C. App. 331, 444 S.E.2d 685 (1994), cert. denied, 339 N.C. 612, 454 S.E.2d 250, cert. dismissed, 339 N.C. 738, 454 S.E.2d 651 (1995).

Vicarious Liability of Board. — County Board of Education's vice-chairman was not acting as an agent of the board when he made statements concerning plaintiff in action against board to newspaper editor; therefore, the board was not vicariously liable for vice-chairman's conduct. Phillips v. Winston-Salem/Forsyth County Bd. of Educ., 117 N.C. App. 274, 450 S.E.2d 753 (1994).

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.

(2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.

(3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.

(4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of

athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed pursuant to the provisions of G.S. 115C-84(e).

(6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbooks fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

(7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.

(8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.

(9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

(10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to assure that the class size and teaching load requirements set forth in G.S. 115C-301 are met. Any teacher who believes that the requirements of G.S. 115C-301 have not been met shall make a report to the principal and superintendent, and the superintendent shall immediately determine whether the requirements have in fact not been met. If the superintendent determines the requirements have not been met, he shall make a report to the next local board of education meeting. The local board of education shall take action to meet the requirements of the statute. If the local board cannot organizationally correct the exception and if any of the conditions set out in G.S. 115C- 301(g)(1) exist, it shall immediately apply to the State Board of Education for additional personnel or a waiver of the class size requirements, as provided in G.S. 115C-301(g).

Upon notification from the State Board of Education that the reported exception does not qualify for an allotment adjustment or a waiver under provisions of G.S. 115C-301, the local board, within 30 days, shall take action necessary to correct the exception.

At the end of the second month of each school year, the local board of education, through the superintendent, shall file a report with the State Board of Education, in a format prescribed by the State Board of Education, describing the organization of each school, the duties of each teacher, the size of each class, and the teaching load of each teacher. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that exist at that time.

In addition to assuring that the requirements of G.S. 115C-301 are met, each local board of education shall also have the duty to provide an adequate number of classrooms to meet the requirements of that statute.

(11) To Determine the Length of the School Day, the School Month and the School Term. — Local boards of education shall determine the length of the school day, the school month and the school term pursuant to the provisions of G.S. 115C-84(a) through (c).

(12) **(For effective date see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the standard course of study.

(12) **(For effective date see notes)** To Implement the Basic Education Program. — Local boards of education shall implement the Basic Education Program in accordance with rules adopted by the State Board. This implementation shall include provision for the efficient teaching of the course content required by the Basic Education Program.

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.

(15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).

(16) To Remove a Superintendent, When Necessary. — Local boards of education shall remove a superintendent for cause, pursuant to the provisions of G.S. 115C-274(a).

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

(19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.

(20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.

(21) It is the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302(c), and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms approved by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of each school.

(22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

(23) To Purchase Equipment and Supplies. — Local boards shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a) and 115C-528.

(24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, antifreeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. Replacement units for activity buses shall be financed with local funds.

(25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.

(26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military.

(27) Repealed by Session Laws 1987, c. 571, s. 2.

(28) To Enter Lease Purchase and Installment Purchase Contracts. — Local boards may enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures. — Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(29) To Authorize the Observance of a Moment of Silence. — To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. — Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. — No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

(30) To Appoint Advisory Councils. — Local boards of education are authorized to appoint advisory councils as provided in G.S. 115C-55.

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

(32) To Refer All Students Who Drop Out of the Public Schools to Appropriate Services. — Local boards of education shall refer all students who drop out of the public schools to appropriate services. When appropriate public school services such as extended day programs are available, the local boards shall refer the students to those services. When appropriate public school programs are not available or are not suitable for certain students, the local board shall refer the students to the community college system or to other appropriate services.

(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b).

(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. — Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1).

(34) To Encourage the Business Community to Facilitate Student Achievement. — Local boards of education, in consultation with local business leaders, shall develop voluntary guidelines relating to after-school employment. The guidelines may include an agreement to limit the number of hours a student may work or to tie the number of hours a student may work to his academic performance, school attendance, and economic need. The General Assembly

finds that local boards of education do not currently have information regarding how many of their students are employed after school and how many hours they work; the General Assembly urges local boards of education to compile this critical information so that the State can determine to what extent these students' work affects their school performance.

Local boards of education shall work with local business leaders to encourage employers to provide parents or guardians with time to attend conferences with their children's teachers.

The Superintendent of Public Instruction shall provide guidance and technical assistance to the local boards of education on carrying out the provisions of this subdivision.

(35) To produce school building improvement reports. — Each administrative unit shall produce school building improvement reports for each school building in the local school administrative unit, in accordance with G.S. 115C-12(9)c3.

(36) To Report All Acts of School Violence. — Local boards of education shall report all acts of school violence to the State Board of Education in accordance with G.S. 115C-12(21).

(37) To purchase group accident and health insurance for students. — Local boards of education may purchase group accident, group health, or group accident and health insurance for students in accordance with G.S. 58-51-81. (1955, c. 1372, art. 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 7; c. 1185; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 538; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1; 1983 (Reg. Sess., 1984), c. 1019, s. 2, 1; c. 1034, s. 16; 1985, c. 436, s. 1; c. 479, ss. 55(c)(4), 55(c)(6); c. 637; c. 757, s. 145(i); 1985 (Reg. Sess., 1986), c. 975, ss. 3, 11; c. 1014, s. 58; 1987, c. 340; c. 414, s. 2; c. 571, s. 2; c. 738, s. 182; 1987 (Reg. Sess., 1988), c. 1025, ss. 9, 15; c. 1086, s. 89(b); 1989, c. 585, s. 2; c. 752, s. 65(b); 1989 (Reg. Sess., 1990), c. 1074, s. 23(b); 1991, c. 706, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(f); 1993, c. 114, s. 1; c. 321, s. 139(c); 1993 (Reg. Sess., 1994), c. 716, s. 2; c. 775, s. 5; 1995, c. 455, s. 1; c. 497, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, 17.)

Subdivision (12) Set Out Twice. — The first version of subdivision (12) set out above is effective until the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program. The second version of subdivision (12) set out above is effective when the components of the standard course of study have been fully incorporated and implemented as a part of the Basic Education Program.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted subdivision (28a), in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28, provides: "(a) G.S. 150B-21.2(a) shall not apply to proposed adopted by the State Board of Education if the proposed rules are directly related to the implementation of this act.

"(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is directly related to the implementation of this act, shall become effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education that is directly related to the implementation of this act, but is not approved by the Rules Review Commission, shall not become effective.

"(c) G.S. 150-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are directly related to the implementation of this act.

"(d) The State Board of Education shall determine whether a proposed rule is directly related to this act based upon a finding that there is a rational relationship between the proposed rule and specific provisions of this act. A proposed rule may create, amend, or repeal a rule. The State Board shall indicate in the notice of the proposed text that the rule is directly related to the implementation of this act and that the Board is proceeding under the authority granted by this act.

"(e) The State Board of Education shall provide written notice to all boards of county commissioners and all local boards of education of proposed rules that are directly related to the implementation of this act and that would affect the expenditures or revenues of a unit of local government under G.S. 150B-21.4(b). The notice shall state that a copy of the fiscal note may be obtained from the State Board.

"(f) This section shall not apply to Sections 11-15.1 of this act."

Effect of Amendments. — Session Laws 1995, c. 455, s. 1, effective July 18, 1995, and to be fully implemented no later than January 1, 1996, added subdivision (29a).

Session Laws 1995, c. 497, ss. 1 and 2, applicable to school years beginning with the 1995-96 school year, rewrote the first sentence of subdivision (29), and added subdivision (29b).

Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 11, 12, and 17, effective June 21, 1996, in subdivision (23), substituted "Local boards" for "They", and added "and 115C-528" at the end; rewrote subdivision (28); and inserted subdivision (33a).

§ 115C-48. Penalties for certain conduct.

(a) Members of local boards of education are criminally liable for certain conduct as provided in G.S. 14-234 through 14-237.

(b) Members of local boards of education are civilly liable for certain conduct as provided in G.S. 115C-441. (1981, c. 423, s. 1; 1995, c. 509, s. 60.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "education" for "election" in subsections (a) and (b).

§ 115C-49: Repealed by Session Laws 1995, c. 501, s. 1, effective July 28, 1995.

ARTICLE 6A.

State Assistance and Intervention in Low Performing School Units.

§§ 115C-64.1 through 115C-64.5: Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 4, effective June 21, 1996.

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.

ARTICLE 7.

Organization of Schools.

§ 115C-68.1. Merger of units by the board of commissioners.

CASE NOTES

Election Enjoined to Prevent Discriminatory Merge. — White voters of Durham County were held entitled to a temporary restraining order to enjoin the election of the public school board pursuant to a districting plan designed to merge people of a particular race within voting districts in a discriminatory manner. Cannon v. North Carolina State Bd. of Educ., 917 F. Supp. 387 (E.D.N.C. 1996).

SUBCHAPTER IV. EDUCATION PROGRAM.

ARTICLE 8.

General Education.

Part 1. Courses of Study.

§ 115C-81. Basic Education Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School

Boards Association. The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the intent of the General Assembly that until the Basic Education Program is fully funded, the implementation of the Basic Education Program shall be the focus of State educational funding. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, 1995.

It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement.

(a1) The Basic Education Program shall describe the education program to be offered to every child in the public schools. It shall provide every student in the State equal access to a Basic Education Program. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and vocational and technical education.

Instruction in vocational and technical education under the Basic Education Program shall be based on factors including:

(1) The integration of academic and vocational and technical education;
(2) A sequential course of study leading to both academic and occupational competencies;
(3) Increased student work skill attainment and job placement;
(4) Increased linkages, where geographically feasible, between public schools and community colleges, so the public schools can emphasize academic preparation and the community colleges can emphasize specific job training; and
(5) Instruction and experience, to the extent practicable, in all aspects of the industry the students are prepared to enter.

(a2) Repealed by Session Laws 1995, c. 534, s. 1, effective July 29, 1995.

(a3) Alcohol and Drug Education Program to Be Recommended and Implemented:

(1) A comprehensive education program that includes alcohol and drug use prevention education must be available to every child in North Carolina schools in kindergarten through high school.
(2) The State Board of Education shall develop and maintain a recommended list of alcohol and drug use prevention education materials that include components for teacher training and ongoing assessment and evaluation to verify success and ensure the use of up-to-date information and strategies.
(3) The Department of Public Instruction will work to strengthen instructional offerings in the content and skill areas of the Basic Education Program in which alcohol and drug use prevention education is addressed. Curricular materials and resources will be developed that meet, extend, and supplement drug and alcohol education as out-

lined in the North Carolina Standard Course of Study and the Teacher Handbook for the competency-based curriculum.

(4) The Department of Public Instruction shall recommend to the State Board of Education any drug use prevention education support materials that should be removed or added to the recommended list of curricular resources developed and maintained by the State Board of Education.

(5) Local boards of education may select supplemental alcohol and drug use prevention education materials from the list maintained by the State Board of Education, or develop their own supplemental materials to be approved by the State Board of Education.

(6) Local boards of education shall implement alcohol and drug use prevention education as a primary part of their comprehensive health education program.

(7) Local boards of education will provide for ongoing evaluation of drug use prevention education resources, to include participation in on-going evaluations with the Department of Public Instruction.

(8) Local boards of education must implement an approved drug and alcohol education prevention program for kindergarten through sixth grade by the 1990-91 school year, and for seventh grade through twelfth grade by the 1991-92 school year. .

(9) Local boards of education will meet educational State accreditation standards related to instruction in preventing alcohol and drug use in grades K-12.

(10) The Department of Public Instruction, in conjunction with local school districts, will provide for staff development to train educators and support personnel to implement a comprehensive alcohol and drug use prevention education program.

(11) Sequential, age-appropriate instruction will be provided that has the following features:
  a. Reaches all students in all grades;
  b. Presents a clear and consistent message that the use of alcohol and illicit drugs and the misuse of other drugs is unhealthy and harmful;
  c. Reflects current research and theory;
  d. Includes all abusable substances;
  e. Utilizes information that is current and accurate;
  f. Involves students in active "hands-on" learning experiences;
  g. Integrates substance abuse education with other health and social issues and other subject and skill areas of the North Carolina Basic Education Program and Standard Course of Study;
  h. Promotes understanding and respect for the law and values of society;
  i. Encourages health, safe, and responsible attitudes and behaviors;
  j. Includes strategies to involve parents, family members, and the community;
  k. Includes information on intervention and treatment services;

l. Is continually open to revision, expansion and improvement.

(a4) Conflict Resolution and Mediation Models: The State Board of Education shall develop a list of recommended conflict resolution and mediation materials, models, and curricula that address responsible decision making, the causes and effects of school violence and harassment, cultural diversity, and nonviolent methods for resolving conflict, including peer mediation and shall make the list available to local school administrative units and school buildings by the beginning of the 1994-95 school year. In developing this list, the Board shall emphasize materials, models, and curricula that currently are being used in North Carolina and that the Board determines to be effective. The Board shall include at least one model that includes instruction and guidance for the voluntary implementation of peer mediation programs and one model that provides instruction and guidance for teachers concerning the integration of conflict resolution and mediation lessons into the existing classroom curriculum.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

(1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically or intellectually gifted students, and the students with discipline and emotional problems;
(2) A set of competencies, by grade level, for each curriculum area;
(3) A list of textbooks for use in providing the curriculum;
(4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with special needs and, in particular, include appropriate modifications;
(5) A program of remedial education;
(6) Required support programs;
(7) A definition of the instructional day;
(8) Class size recommendations and requirements;
(9) Prescribed staffing allotment ratios;
(10) Material and equipment allotment ratios;
(11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
(12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

(c) **(For effective date see notes)** Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the standard course of study, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise

§ 115C-81(c) is set out twice. See notes.

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system, the dangers of harmful or illegal drugs, including alcohol, and cardio-pulmonary resuscitation (CPR) and the Heimlich maneuver.

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(c) **(For effective date see notes)** Local boards of education shall provide for the efficient teaching at appropriate grade levels of all materials set forth in the Basic Education Program, including integrated instruction in the areas of citizenship in the United States of America, government of the State of North Carolina, government of the United States, fire prevention, the free enterprise system, the dangers of harmful or illegal drugs, including alcohol, and cardio-pulmonary resuscitation (CPR) and the Heimlich maneuver.

Except when a board authorizes teaching in a foreign language in order to comply with federal law, local boards of education shall require all teachers and principals to conduct classes except foreign language classes in English. Any teacher or principal who refuses to do so may be dismissed.

(d) The standard course of study as it exists on January 1, 1985, and as subsequently revised by the State Board, shall remain in effect until its components have been fully incorporated and implemented as a part of the Basic Education Program.

(e) Repealed by Session Laws 1995, c. 534, s. 2, effective July 29, 1995.

(e1) School Health Education Program to Be Developed and Administered.

(1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program includes age-appropriate instruction in the following subject areas, regardless of whether this instruction is described as, or incorporated into a description of, "family life education", "family health education", "health education", "family living", "health", "healthful living curriculum", or "self-esteem":

a. Mental and emotional health;
b. Drug and alcohol abuse prevention;
c. Nutrition;
d. Dental health;
e. Environmental health;
f. Family living;
g. Consumer health;
h. Disease control;
i. Growth and development;
j. First aid and emergency care;
k. Preventing sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS) virus infection, and other communicable diseases;
l. Abstinence until marriage education; and
m. Bicycle safety.

(2) The State Board of Education shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local programs in the same manner as for other programs. The State Board of Education shall adopt objectives for the instruction of the subject areas listed in subdivision (1) of this subsection that are appropriate for each grade level. In addition, the State Board shall approve textbooks and other materials incorporating these objectives that local school administrative units may purchase with State funds. The State Board of Education, through the Department of Public Instruction, shall, on a regular basis, review materials related to these objectives, and distribute these reviews to local school administrative units for their information.

(3) The State Board of Education shall develop objectives for instruction in the prevention of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS) virus infection, that includes emphasis on the importance of parental involvement, abstinence from sex until marriage, and avoiding intravenous drug use. Any program developed under this subdivision shall present techniques and strategies to deal with peer pressure and to offer positive reinforcement and shall teach reasons, skills, and strategies for remaining or becoming abstinent from sexual activity; for appropriate grade levels and classes, shall teach that abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health and emotional problems, and that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding diseases transmitted by sexual contact, including Acquired Immune Deficiency Syndrome (AIDS); and shall teach the positive benefits of abstinence until marriage and the risks of premarital sexual activity. Any instruction concerning the causes of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in cases where homosexual acts are a significant means of transmission, shall include the current legal status of those acts.

(4) The State Board of Education shall evaluate abstinence until marriage curricula and their learning materials and shall develop and maintain a recommended list of one or more approved abstinence until marriage curricula. The State Board may develop an abstinence until marriage program to include on the recommended list. The State Board of Education shall not select or develop a program for inclusion on the recommended list that does not include the positive benefits of abstinence until marriage and the risks of premarital sexual activity as the primary focus. The State Board shall include on the recommended list only programs that include, in appropriate grades and classes, instruction that:

a. Teaches that abstinence from sexual activity outside of marriage is the expected standard for all school-age children;

b. Presents techniques and strategies to deal with peer pressure and offering positive reinforcement;

c. Presents reasons, skills, and strategies for remaining or becoming abstinent from sexual activity;

d. Teaches that abstinence from sexual activity is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), and other associated health and emotional problems;

e. Teaches that a mutually faithful monogamous heterosexual relationship in the context of marriage is the best lifelong means of avoiding sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS);

f. Teaches the positive benefits of abstinence until marriage and the risks of premarital sexual activity;

g. Provides opportunities that allow for interaction between the parent or legal guardian and the student; and

h. Provides factually accurate biological or pathological information that is related to the human reproductive system.

(5) The State Board of Education shall make available to all local school administrative units for review by the parents and legal guardians of students enrolled at that unit any State-developed objectives for instruction, any approved textbooks, the list of reviewed materials, and any other State-developed or approved materials that pertain to or are intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), to the avoidance of out-of-wedlock pregnancy, or to the abstinence until marriage curriculum. The review period shall extend for at least 60 days before use.

(6) Each local school administrative unit shall provide a comprehensive school health education program that meets all the requirements of this subsection and all the objectives established by the State Board. Each local board of education may expand on the subject areas to be included in the program and on the instructional objectives to be met. This expanded program may include a comprehensive sex education program for that local school administrative unit only if all of the following requirements are satisfied:

a. Before a comprehensive sex education program is adopted, the local board of education shall conduct a public hearing, after adequately notifying the public of the hearing.

b. For at least 30 days before this public hearing and during this public hearing, the objectives for this proposed program and all instructional materials shall be made available for review.

c. For at least 30 days after the public hearing, the objectives for the program and all instructional materials shall remain available for review by parents and legal guardians of students in that local school administrative unit.

(7) Each school year, before students may participate in any portion of (i) a program that pertains to or is intended to impart information or promote discussion or understanding in regard to the prevention of sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), or to the avoidance of out-of-wedlock pregnancy, (ii) an abstinence until marriage program, or (iii) a comprehensive sex education program, whether developed by the State or by the local board of education, the parents and legal guardians of those students shall be given an opportunity to review the objectives and materials. Local boards of education shall adopt policies to provide opportunities either for parents and legal guardians to consent or for parents and legal guardians to withhold their consent to the students' participation in any or all of these programs.

(8) Students may receive information about where to obtain contraceptives and abortion referral services only in accordance with a local board's policy regarding parental consent. Any instruction concerning the use of contraceptives or prophylactics shall provide accurate statistical information on their effectiveness and failure rates for preventing pregnancy and sexually transmitted diseases, including Acquired Immune Deficiency Syndrome (AIDS), in actual use among adolescent populations and shall explain clearly the difference between risk reduction and risk elimination through abstinence.

(9) Contraceptives, including condoms and other devices, shall not be made available or distributed on school property.

(10) School health coordinators may be employed to assist in the instruction of any portion of the comprehensive school health education program. Where feasible, a school health coordinator should serve more than one local school administrative unit. Each person initially employed as a State-funded school health coordinator after June 30, 1987, shall have a degree in health education.

(f) Establishment and Maintenance of Kindergartens. —

(1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in this subsection.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

(2) Any child who has passed the fifth anniversary of his birth on or before October 16 of the year in which he enrolls shall be eligible for enrollment in kindergarten. Any child who is enrolled in kindergarten and not withdrawn by his parent or guardian shall attend kindergarten.

(3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program.

(g) Civic Literacy. —

(1) Local boards of education shall require during the high school years the teaching of the nation's founding and related documents, which shall include at least the major principles in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(2) Local boards of education shall require that high school students demonstrate knowledge and understanding of the nation's founding and related documents in order to receive a certificate or diploma of graduation from high school.

(3) Local boards of education shall include among the requirements for graduation from high school a passing grade in all courses that include primary instruction in the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(4) The State Board of Education shall require that any curriculum-based tests developed and administered statewide beginning with academic year 1990-91 include questions related to the Declaration of Independence, the United States Constitution and its amendments, and the most important of the Federalist Papers.

(5) The State Department of Public Instruction and the local boards of education, as appropriate, shall establish curriculum content and provide for teacher training to ensure that the intent and provisions of this subsection are carried out. The curriculum content established shall include a review of the contributions made by Americans of all races during the period in which our nation was founded.

(h) Character Education. — Local boards of education may require the teaching of the following character traits in the public schools:

(1) Courage. — Having the determination to do the right thing even when others don't and the strength to follow your conscience rather than the crowd; and attempting difficult things that are worthwhile.

(2) Good judgment. — Choosing worthy goals and setting proper priorities; thinking through the consequences of your actions; and basing decisions on practical wisdom and good sense.

(3) Integrity. — Having the inner strength to be truthful, trustworthy, and honest in all things; acting justly and honorably.

(4) Kindness. — Being considerate, courteous, helpful, and understanding of others; showing care, compassion, friendship, and generosity; and treating others as you would like to be treated.

(5) Perseverance. — Being persistent in the pursuit of worthy objectives in spite of difficulty, opposition, or discouragement; and exhibiting patience and having the fortitude to try again when confronted with delays, mistakes, or failures.

(6) Respect. — Showing high regard for authority, for other people, for self, for property, and for country; and understanding that all people have value as human beings.

(7) Responsibility. — Being dependable in carrying out obligations and duties; showing reliability and consistency in words and conduct; being accountable for your own actions; and being committed to active involvement in your community.

(8) Self-Discipline. — Demonstrating hard work and commitment to purpose; regulating yourself for improvement and restraining from inappropriate behaviors; being in proper control of your words, actions, impulses, and desires; choosing abstinence from premarital sex, drugs, alcohol, and other harmful substances and behaviors; and doing your best in all situations. (1955, c. 1372, art. 5, s. 20; art. 23, ss. 1, 5, 6; 1957, cc. 845, 1101; 1969, c. 487, ss. 1, 2; 1971, c. 356; 1973, c. 476, s. 128; 1975, c. 65, ss. 1, 2; 1977, 2nd Sess., c. 1256, s. 1; 1981, c. 423, s. 1; 1983, c. 656, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 81; c. 1103, s. 2; 1985, c. 479, ss. 55(c)(1), 55(c)(2); 1987, c. 630; c. 738, ss. 186(a), 186(b), 187(a); 1989, c. 370; c. 801; 1989 (Reg. Sess., 1990), c. 1066, s. 100; 1991, c. 636, s. 9; c. 689, ss. 196(a), 198; c. 739, s. 11; 1991 (Reg. Sess., 1992), c. 769, s. 1; c. 900, s. 75.1(h); 1993, c. 180, s. 1; c. 321, s. 139(d); c. 359, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 19.5(a); 1995, c. 371, s. 1; c. 450, ss. 5, 6, 7; c. 507, s. 17.14; c. 509, ss. 61, 62; c. 534, ss. 1, 2, 3; 1995 (Reg. Sess., 1996), c. 716, s. 8.6; 1996, 2nd Ex. Sess., c. 18, ss. 18.17(a), 18.24(a).)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until the components of the Standard Course of Study have been fully incorporated and implemented as a part of the Basic Educational Program. The second version of subsection (c) set out above is effective when the components of the Standard Course of Study have been fully incorporated and implemented as a part of the Basic Educational Program.

Editor's Note. — Session Laws 1995, c. 371, which amended this section, in s. 2 provides for the suspension of the rule adopted by the State Board of Education establishing Algebra I as a requirement for a high school diploma as it applies to any student whose individualized education program identifies the student as learning disabled in the area of mathematics and states that the learning disability will prevent the student from mastering Algebra I, and provides that the State Board may require reasonable course substitutions for these students.

Session Laws 1995, c. 450, ss. 5, 6, and 7, effective July 1, 1995, in subsection (e), rewrote subdivisions (e)(3), (e)(4), and (e)(5) to read as follows:

"(e)(3) The development and administration of this program shall be the responsibility of each local school administrative unit in the State that uses State funds to implement this program.

"(e)(4) Each person initially employed as a State-funded school health coordinator after June 30, 1987, shall have a degree in health education.

"(e)(5) The Department of Public Instruction shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local programs in the same manner as for other programs."

Subsection (e) was repealed by Session Laws 1995, c. 534, s. 2, effective July 29, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 17.3, provides for the transfer of funds appropriated to the Office of State Budget and Management, School Technology Reserve, to the State Board of Education, and the allocation of these funds by the State Board of Education to the credit of local school administrative units.

Session Laws 1995, c. 507, s. 17.14, deleted the language in Session Laws 1995, c. 371, s. 3, which provided that the amendments to this section by c. 371 would expire June 30, 1997.

Session Laws 1995, c. 534, s. 4, provides that local boards of education are authorized to implement this act as soon as feasible and are required to do so by the beginning of the 1996-97 school year.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

Session Laws 1995, c. 371, s. 1, effective July 5, 1995, added the last sentence of subsection (b) following subdivision (b)(12).

Session Laws 1995, c. 509, ss. 61 and 62, effective July 29, 1995, inserted "and technical" in the last sentence of the first paragraph of subsection (a1); and added "Program" at the end of subsection (d).

Sessions Laws 1995, c. 534, ss. 1, 2 and 3, effective July 29, 1995, repealed subsection (a2) regarding instruction on AIDS prevention; repealed subsection (e) regarding development and administration of the School Health Education Program; and added subsection (e1).

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 8.6, effective June 21, 1996, added subsection (h).

Session Laws 1996, Second Extra Session, c. 18, s. 18.17(a), effective August 3, 1996, substituted "guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations" for "standards" in subdivision (b)(11).

Session Laws 1996, Second Extra Session, c. 18, s. 18.24(a), effective July 1, 1996, substituted "or intellectually gifted students" for "gifted" in subdivision (b)(1).

§ 115C-81.2. Comprehensive plan for reading achievement.

(a) The State Board of Education shall develop a comprehensive plan to improve reading achievement in the public schools. The plan shall be fully integrated with State Board plans to improve student performance and promote local flexibility and efficiency. The plan shall be based on reading instructional practices for which there is strong evidence of effectiveness in existing empirical scientific research studies on reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents of students, and other interested parties. The plan shall, if appropriate, include revision of the standard course of study, revision of teacher certification standards, and revision of teacher education program standards.

(b) The State Board of Education shall critically evaluate and revise the standard course of study so as to provide school units with guidance in the implementation of balanced, integrated, and effective programs of reading instruction. The General Assembly believes that the first, essential step in the complex process of learning to read is the accurate pronunciation of written words and that phonics, which is the knowledge of relationships of the symbols of the written language and the sounds of the spoken language, is the most reliable approach to arriving at the accurate pronunciation of a printed word. Therefore, these programs shall include early and systematic phonics instruction. The State Board shall provide opportunities for teachers, parents, and other interested parties to participate in this evaluation and revision.

(c) In order to reflect changes to the standard course of study and to emphasize balanced, integrated, and effective programs of reading instruction that include early and systematic phonics instruction, the State Board of Education, in collaboration with the Board of Governors of The University of North Carolina and with the North Carolina Association of Independent Colleges and Universities, shall review, evaluate, and revise current teacher certification standards and teacher education programs within the institutions of higher education that provide coursework in reading instruction.

(d) Local boards of education are encouraged to review and revise existing board policies, local curricula, and programs of professional development in order to reflect changes to the standard course of study and to emphasize balanced, integrated, and effective programs of reading instruction that include early and systematic phonics instruction.

(e) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 31, 1996, and annually thereafter on the comprehensive plan developed under Section 1 of Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 1 [subsection (a) of this section]. The first report shall include revisions made to the standard course of study, teacher certification standards, and teacher education programs. Subsequent reports shall address the effectiveness, based on factors including improved student performance in reading, of the implementation of the plan. The State Board may make recommendations to the General Assembly in any of its reports. (1995 (Reg. Sess., 1996), c. 716, ss. 8.1, 8.2, 8.3, 8.4, 8.5(a).)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 8.1, 8.2, 8.3, 8.4, and 8.5(a) were codified as this section at the direction of the Revisor of Statutes.

The reference to Section 1 of Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 1, above, apparently should be a reference to Section 8.1 of that act, codified as subsection (a) of this section.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 8.5(b), provides: "The State Board shall disseminate to local boards of education by March 31, 1997, the changes to the standard course of study."

Part 2. Calendar.

§ 115C-84. Length of school day, month, and term; Veterans Day.

(a) School Day. — The length of the school day shall be determined by the several local boards of education for all public schools in their respective local school administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours: Provided, the several local boards of education may adopt rules and regulations allowing handicapped pupils, kindergarten pupils, and pupils attending the first, second, and third grades to attend school for a period less than six hours. The superintendent of the several local boards of education, in the event of an emergency, act of God, or any other conditions requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher.

The General Assembly urges the local boards of education to expand the length of the school day so that it includes at least six hours of instructional time.

(b) School Month. — A school month shall consist of 20 teaching days. School shall not be taught on Saturdays unless the needs of agriculture, or other conditions in the unit make it desirable that school be taught on such days. Whenever it is desirable to complete the school term of 180 days in a shorter term than nine calendar months, the board of education of any local school administrative unit may, in its discretion, require that school shall be taught on legal holidays, except Sundays, and in accordance with the custom and practice of such community.

(c) There shall be operated in every school in the State a uniform school term of 180 days for instructing pupils. The school calendar for each local school administrative unit shall include days that can be used to make up any of the 180 days of the school term on which school is closed due to hazardous weather conditions, natural disaster, or other emergency; the required number of such days for a local school administrative unit shall be the greater of (i) five days or (ii) the average number of days missed in five of the last six school years in which the least number of days were missed. If a local school administrative unit has made up at least the required number of such days and if the local school board finds that it is impracticable to make up additional days, the local school board may excuse students from attendance for three such days; on the days excused for students, the local board may require teachers to report for a workday or it may excuse teachers from attendance on such days. The days excused for teachers under this paragraph do not have to be made up by teachers and do not affect teachers' pay. Local boards of education shall report all days excused for students, whether the days were excused for teachers, and the reason they were excused to the State Board of Education. This report shall include total days missed and the reason therefor, by date, and the total number of days made up, as justification for the local board's action in the matter.

After the required number of days have been made up within the school calendar and after the local board has exercised its authority to suspend days as set forth in the preceding paragraph, the State Board of Education, at the request of the local board of education, may suspend school additional days in any local school administrative unit where it finds that conditions justify such suspension of school. The State Board of Education may also, at the request of the local board of education, suspend one or more days from the 180 day school term for an individual school, regardless of how many days have been made up within the school calendar for the school unit as a whole, if emergency conditions exist at that school that might be threatening to the health, safety, and welfare of students and staff. The days excused under this paragraph do not have to be made up by teachers or students and the first 15 such days do not affect teachers' pay.

During any period of emergency, in any section of the State where the said emergency conditions make it necessary, the State Board of Education may order general, and if necessary, extended recesses or adjournment of the public schools.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 9.

(e) Fixing Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed and determined by local boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time.

(f) Veterans Day. — Veterans Day shall be a holiday for all children enrolled in the public schools, but shall be a work day for all school employees, unless designated as a holiday by the local board of education. (1955, c. 1372, art. 5, ss. 18, 19; 1957, c. 262; 1963, c. 425; c. 1223, s. 2; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; c. 678; 1971, c. 85; c. 90, s. 1; 1973, c. 1137; 1977, c. 1128; 1979, c. 1069, s. 1.1; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 15.1; 1985, c. 791, ss. 7, 8; 1985 (Reg. Sess., 1986), c. 975, s. 14; 1987, c. 477, s. 1; 1991, c. 689, s. 197; 1995, c. 130, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 9.)

Effect of Amendments. — The 1995 amendment, effective May 31, 1995, added the second sentence in the second paragraph of subsection (c).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, repealed subsection (d), regarding standard class duration.

§ 115C-84.1. Longer school days as offset for lost days.

(a) A local board of education may schedule school days longer than the minimum required instructional hours so as to offset days lost due to inclement weather. For the purposes of computing the length of the school term and determining pay of school personnel, every additional hour scheduled may be used to offset one hour of a school day lost due to inclement weather.

(b) A local board of education may schedule longer school days under subsection (a) of this section only after all extra calendar days required under G.S. 115C-84(c) have been scheduled to be used as instructional days.

(c) This section applies only to the Alleghany, Avery, Buncombe, Cherokee, Clay, Craven, Duplin, Gaston, Graham, Haywood, Henderson, Jackson, Jones, Lenoir, Macon, Madison, McDowell, Mitchell, Pamlico, Polk, Rockingham, Stokes, Swain, Transylvania, Wake, Watauga, and Yancey County School Administrative Units. The local board of education in each of these counties shall evaluate the educational effectiveness of this type of scheduling and shall report the results of this evaluation to the State Board of Education for the first two years following the ratification of this section. (1995 (Reg. Sess., 1996), c. 662, ss. 1, 2, 3; c. 723, s. 3; c. 724, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 662, ss. 1 through 3, have been codified as G.S. 115C-84.1, and additional counties have been included from Session Laws 1995 (Reg. Sess., 1996), c. 723, s. 3, and c. 724, s. 3, at the direction of the Revisor of Statutes.

Session Laws 1995 (Reg. Sess., 1996), c. 662, s. 4, made that Act effective upon ratification, and applicable to school years beginning with the 1996-97 school year. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 723, s. 4, made that Act effective upon ratification and applicable to school years beginning with the 1996-97 school year. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 724, s. 5, made that Act effective upon ratification and applicable to school years beginning with the 1996-97 school year. The Act was ratified June 21, 1996.

Part 3. Textbooks.

§ 115C-85. Textbook needs are determined by course of study.

When the State Board of Education has adopted, upon the recommendation of the Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks.

As used in this part, "textbook" means systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process.

Textbooks adopted in accordance with the provisions of this Part shall be used by the public schools of the State except as provided in G.S. 115C-98(b1). (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 20; 1995 (Reg. Sess., 1996), c. 716, s. 18.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "except as provided in G.S. 115C-98(b1)" to the end of the third paragraph.

§ 115C-98. Local boards of education to provide for local operation of the textbook program, the selection and procurement of other instructional materials, and the use of nonadopted textbooks.

(a) Local boards of education shall adopt rules not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, audiovisual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.

Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, to determine if the materials are related to and within the limits of the prescribed curriculum, and to determine when the materials may be presented to students during the school day. Supplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.

Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(b1) A local board of education may establish a community media advisory committee to investigate and evaluate challenges from parents, teachers, and members of the public to textbooks and supplementary instructional materials on the grounds that they are educationally unsuitable, pervasively vulgar, or inappropriate to the age, maturity, or grade level of the students. The State Board of Education shall review its rules and policies concerning these challenges and shall establish guidelines to be followed by community media advisory committees.

The local board, at all times, has sole authority and discretion to determine whether a challenge has merit and whether challenged material should be retained or removed.

(b2) Local boards of education may:

(1) Select, procure, and use textbooks that have not been adopted by the State Board of Education for use throughout the local school administrative unit for selected grade levels and courses; and

(2) Approve school improvement plans developed under G.S. 115C-105.27 that include provisions for using textbooks that have not been adopted by the State Board of Education for selected grade levels and courses.

All textbook contracts made under this subsection shall include a clause granting to the local board of education the license to produce braille, large print, and audiocassette tape copies of the textbooks for use in the local school administrative unit.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the local school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1; 1981, c. 423, s. 1; 1989 (Reg. Sess., 1990), c. 1074, s. 23(a); 1995 (Reg. Sess., 1996), c. 716, ss. 8.7, 19.)

Editor's Note. — The subsection designation (b2) was added at the direction of the Revisor of Statutes, the designation in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 19, having been (b1).

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 8.7, effective June 21, 1996, inserted subsection (b1).

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 19, effective June 21, 1996, added "and the use of nonadopted textbooks" to the end of the catchline and made related changes; deleted "and regulations" following "rules" in subsection (a); substituted "audiovisual" for "audio-visual" in the first paragraph of subsection (b); and added subsection (b2).

ARTICLE 8A.

North Carolina Education Standards and Accountability Commission.

§ 115C-105.1. Creation of the Commission.

The General Assembly believes that all children can learn. The General Assembly further believes that all graduates of North Carolina public schools should have mastered the skills required to become productive members of the workforce and succeed in life. The General Assembly further believes that having a highly qualified workforce is essential to strengthening North Carolina's competitive position in the modern world economy, improving workforce productivity, and ensuring a more prosperous future for all our citizens. With that mission as its guide, the General Assembly creates the North Carolina Education Standards and Accountability Commission.

The Commission shall be located administratively under the State Board of Education but shall exercise all its prescribed statutory powers independently of the State Board of Education. (1993, c. 117, s. 1; 1995, c. 324, s. 17.12(b).)

Editor's Note. —
Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 324, s. 17.12(a), provides for the transfer of the North Carolina Education Standards and Accountability Commission from the Office of the Governor to the State Board of Education.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in the second paragraph substituted "under the" for "in the" following "administratively", and twice substituted "State Board of Education" for "Office of the Governor".

§ 115C-105.3. Purpose.

The purpose of the Commission is to develop high and clearly defined education standards for the public schools of North Carolina. These standards shall specify the skills and the knowledge that high school graduates should possess in order to be competitive in the modern economy. The purpose of the Commission is also to develop fair and valid assessments to assure that high school graduates in North Carolina meet these standards. No later than the Spring semester of the year 2000 or as soon as the State Board of Education adopts the standards and system of assessments, every graduating high school senior shall be required to achieve these standards as a condition for receiving a diploma.

These high standards and assessments shall focus on the key skills needed by students as they strive to be successful after high school and shall reflect the high expectations for every student demanded by the State's education mission in G.S. 115C-81(a) and G.S. 115C-105.20. Once these key skills are identified, parents, teachers, and the entire school community should be encouraged to help each student meet the student's fullest potential. (1993, c. 117, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 3; 1995 (Reg. Sess., 1996), c. 716, s. 22.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "G.S. 115C-81(a) and G.S. 115C-105.20" for "G.S. 115C-81(a), 115C-238.1, and 115C-238.13(a)" in the second paragraph.

§§ 115C-105.11 through 115C-105.19: Reserved for future codification purposes.

ARTICLE 8B.

School-Based Management and Accountability Program.

Part 1. Implementation of Program.

§ 115C-105.20. School-Based Management and Accountability Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop a School-Based Management and Accountability Program. The primary goal of the Program shall be to improve student performance.

(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to:

(1) Assist local boards and schools in the development and implementation of school-based management under Part 2 of this Article.

(2) Recognize the schools that meet or exceed their goals.

(3) Identify low-performing schools under G.S. 115C-105.37, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.37. The assistance teams should consist of currently practicing teachers and staff, representatives of institutions of higher education, school administrators, and others the State Board considers appropriate.

(4) Enable assistance teams to make appropriate recommendations under G.S. 115C-105.38.

(5) Establish a process to resolve disputes between local boards and schools in the development and implementation of school improvement plans under G.S. 115C-105.27. This process shall provide for final resolution of the disputes. (1989, c. 778, s. 3; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(a); 1993, c. 321, s. 144.2(a); 1995, c. 272, s. 1; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. —

Session Laws 1995, c. 272, s. 5, provides that a local board is not required to adopt a new plan in accordance with the 1995 amendments to this section prior to the 1996-97 school year.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to plans in effect for school years beginning with the 1995-96 school year, added "after consultation with the Task Force on Site-Based Management" in the fifth sentence; in subdivision (1) deleted "beginning with the 1990-91 fiscal year" following "through which", and added "and" at the end of the subdivision; in subdivision (2) substituted "school and student performance goals and strategies to achieve the standards adopted by the State Board" for "student performance goals and annual milestones to measure progress in meeting those goals", and added the second, third and fourth sentences; deleted subdivisions (3) and (4), regarding performance indicators for measuring student and school performance; and made punctuation changes throughout the section.

Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 2 and 3, effective June 21, 1996, substituted "School-Based Management and" for "Performance-based" in the Article 8B heading; added the Part 1 heading; recodified former G.S. 115C-238.1 as this section; substituted "School-Based Management and Accountability Program" for "Performance-based Accountability Program; development and implementation by State Board" in the section catchline; and rewrote the section.

§ 115C-105.21. Local participation in the Program.

(a) Local school administrative units shall participate in the School-Based Management and Accountability Program.

(b) The School-Based Management and Accountability Program shall provide increased local control of schools with the goal of improving student performance. Local boards of education:

(1) Are allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-105.25; and

(2) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-105.26.

(c) The School-Based Management and Accountability Program shall be based upon an accountability, recognition, assistance, and intervention process in order to hold each school and the school's personnel accountable for improved student performance in the school. (1989, c. 778, s. 3; 1991, c. 331, s. 1; 1993, c. 263, s. 1; c. 522, s. 3; 1995, c. 272, s. 2; c. 450, s. 12; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Local Modification. — Mecklenburg County School Administrative Unit, Burke County School Administrative Unit: 1995, c. 450, s. 25(a).

Editor's Note. —

Session Laws 1995, c. 272, s. 5, provides that a local board is not required to adopt a new plan in accordance with the 1995 amendments to this section prior to the 1996-97 school year.

Effect of Amendments. — Session Laws 1995, c. 272, s. 2, effective July 1, 1995, and applicable to plans in effect for school years beginning with the 1995-96 school year, deleted the second sentence of subdivision (b)(2) regarding performance standards in the State Accreditation Program serving as the basis for developing student performance indicators; and deleted subdivision (b)(3) regarding funds for differentiated pay for certain State paid employees.

Session Laws 1995 c. 450, s. 12, effective July 1, 1995, in subsection (b) substituted "G.S. 115C-238.6" for "G.S. 115C-238.5", and added subdivisions (5a) and (5b).

Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 2 and 3, effective June 21, 1996, recodified former G.S. 115C-238.2 as this section; deleted "voluntary; the benefits of local participation" from the end of the catchline; and rewrote this section.

§§ 115C-105.22 through 115C-105.24: Reserved for future codification purposes.

Part 2. School-Based Management.

§ 115C-105.25. Budget flexibility.

(a) Consistent with improving student performance, a local board shall provide maximum flexibility to schools in the use of funds to enable the schools to accomplish their goals.

(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

(1) In accordance with a school improvement plan accepted under G.S. 115C-105.27, State funds allocated for teacher assistants may be transferred only for personnel (i) to serve students only in kindergarten through third grade, or (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school. Funds allocated for teacher assistants may be transferred to reduce class size or to reduce the student-teacher ratio in kindergarten through third grade so long as the affected teacher assistant positions are not filled when the plan is amended or approved by the building-level staff entitled to vote on the plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented. Any State funds appropriated for teacher assistants that were converted to certificated teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

(2) In accordance with a school improvement plan accepted under G.S. 115C-105.27, (i) State funds allocated for classroom materials/instructional supplies/equipment may be transferred only for the purchase of textbooks; (ii) State funds allocated for textbooks may be transferred only for the purchase of instructional supplies, instructional equipment, or other classroom materials; and (iii) State funds allocated for noninstructional support personnel may be transferred only for teacher positions.

(3) No funds shall be transferred into the central office allotment category.

(4) **(Effective until July 1, 1997)** Funds allocated for children with special needs may be transferred only for academically

§ 115C-105.25(b)(4) and (b)(8) are set out twice. See notes.

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or intellectually gifted students. Funds allocated for driver's education shall not be transferred.

(4) **(Effective July 1, 1997)** Funds allocated for children with special needs and funds allocated for driver's education shall not be transferred.

(5) Funds allocated for classroom teachers may be transferred only for teachers of exceptional children, for teachers of at-risk students, and for authorized purposes under the textbooks allotment category and the classroom materials/instructional supplies/equipment allotment category.

(6) Funds allocated for vocational education may be transferred only in accordance with any rules that the State Board of Education considers appropriate to ensure compliance with federal regulations.

(7) Funds allocated for career development shall be used in accordance with Section 17.3 of Chapter 324 of the 1995 Session Laws.

(8) **(Effective until July 1, 1997)** Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; (iii) for children with special needs; or (iv) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7.

(8) **(Effective July 1, 1997)** Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; or (iii) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7. (1995 (Reg. Sess., 1996), c. 716, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(h)-(k).)

Subdivisions (b)(4) and (b)(8) Set Out Twice. — The first version of subdivisions (b)(4) and (b)(8) set out above is effective until July 1, 1997. The second version of subdivisions (b)(4) and (b)(8) set out above is effective July 1, 1997.

Local Modification. — Burke: 1995 (Reg. Sess., 1996), c. 716, s. 27; Mecklenburg: 1995 (Reg. Sess., 1996), c. 716, s. 27.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 32, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.21A.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, ss. 18.24(h) and 18.24(j), effective July 1, 1996, added subdivision (b)(8); and in subdivision (b)(4) substituted "children with special needs may be transferred only for academically or intellectually gifted students" for "exceptional children and funds," and added "Funds" at the beginning of the second sentence.

Session Laws 1996, Second Extra Session, c. 18, ss. 18.24(i) and 18.24(k), effective July 1, 1997, substituted "or (iii)" for "(iii) for children with special needs; or (iv)" in subdivision (b)(8); and substituted "and funds" for "may be transferred only for academically or intellectually gifted students. Funds" in subdivision (b)(4).

§ 115C-105.26. Waivers of State laws, rules, or policies.

(a) When included as part of a school improvement plan accepted under G.S. 115C-105.27, local boards of education shall submit requests for waivers of State laws, rules, or policies to the State Board of Education. A request for a waiver shall (i) identify the school making the request, (ii) identify the State laws, rules, or policies that inhibit the school's ability to improve student performance, (iii) set out with specificity the circumstances under which the waiver may be used, and (iv) explain how the requested waiver will permit the school to improve student performance. Except as provided in subsection (c) of this section, the State Board shall grant waivers only for the specific schools for which they are requested and shall be used only under the specific circumstances for which they are requested.

(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

(1) State laws pertaining to class size, teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1; and

(2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

(c) The State Board also may grant requests received from local boards for waivers of State laws, rules, or policies that affect the organization, duties, and assignment of central office staff only. However, none of the duties to be performed under G.S. 115C-436 may be waived.

(d) Notwithstanding subsections (b) and (c) of this section, the State Board shall not grant waivers of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board.

(e) Notwithstanding subsection (b) of this section, the State Board may grant requests received from local boards for waivers of State laws, rules, or policies pertaining to the placement of principals on the State salary schedule for public school administrators in order to provide financial incentives to encourage principals to accept employment in a school that has been identified as low-performing under G.S. 115C-105.37. The State Board shall act on requests under this subsection at the first Board meeting following receipt of each request.

(f) Except as provided in subsection (e) of this section, the State Board shall act within 60 days of receipt of all requests for waivers under this section.

(g) The State Board shall, on a regular basis, review all waivers it has granted to determine whether any rules should be repealed or modified or whether the Board should recommend to the General Assembly the repeal or modification of any laws. (1995 (Reg. Sess., 1996), c. 716, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 32, made this section effective upon ratification. The Act was ratified June 21, 1996.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.21B.

§ 115C-105.27. Development and approval of school improvement plans.

In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. The strategies for improving student performance shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan. The strategies may include a decision to use State funds in accordance with G.S. 115C-105.25. The strategies may also include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. 115C-105.26.

Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans. (1989, c. 778, s. 3; 1991 (Reg. Sess., 1992), c. 900, s. 75.1(b); 1993, c. 38, s. 1; c. 263, s. 2; c. 321, s. 144.2(b); 1995, c. 272, s. 3; c. 450, s. 13; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.22. The subsection (b1) designation was deleted at the direction of the Revisor of Statutes.

Session Laws 1995, c. 272, s. 5, provides that a local board is not required to adopt a new plan in accordance with the 1995 amendments to this section prior to the 1996-97 school year.

Effect of Amendments. — Session Laws 1995, c. 272, s. 3, effective July 1, 1995, and applicable to plans in effect for school years beginning with the 1995-96 school year, in the introductory language of subsection (b) added "school and" preceding "student performance" in the subsection catchline and in the first sentence, and deleted the second through sixth sentences regarding the involvement of an advisory panel in developing student performance goals and the composition of the panel; added subdivision (b)(1) and (b)(2) designations; in subdivision (b)(1) added the subdivision heading, substituted "standards" for "student and school performance indicators" in the first sentence, and in the second sentence added "progress toward school and" and substituted "goals" for "indicators"; added the subdivision heading in subdivision (b)(2); added subdivision (b)(3); in the first paragraph of subsection (b1), rewrote the first sentence, substituted "school improvement teams" for "building level committees" in the second and fourth sentences, added "school and" preceding "student performance goals" in the subsection catchline and the third sentence, in the fifth sentence added "strategies" and "and student", and added "These" in the sixth sentence; in the first sentence of the second paragraph of subsection (b1) added "school and" preceding "student performance goals", and substituted "principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants" for "staff"; rewrote the third sentence of the third paragraph of subsection (b1); and deleted subsection (c) regarding the development of differentiated pay plans by each school and by the local board of education for central office personnel.

Session Laws 1995, c. 450, s. 13, effective July 1, 1995, in subsection (b1), in the first paragraph, added the sixth sentence, and substituted "The" for "These" in the seventh sentence.

Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 2 and 3, effective June 21, 1996, recodified former G.S. 115C-238.3 as this section; substituted "and approval of school improvement" for "of local plans; elements of local" in the catchline; and rewrote this section.

§§ 115C-105.28, 115C-105.29: Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 3, effective June 21, 1996.

Editor's Note. — The numbers of these sections were assigned by the Revisor of Statutes, the numbers in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.23 and 115C-105.24.

§ 115C-105.30. Distribution of staff development funds.

Any funds the local board of education makes available to an individual school building to implement the school improvement plan at that school shall be used in accordance with that plan.

Each local board shall distribute seventy-five percent (75%) of the funds in the staff development funding allotment to the schools to be used in accordance with that school's school improvement plan. By October 1 of each year, the principal shall disclose to all affected personnel the total allocation of all funds available to the school for staff development and the superintendent shall disclose to all affected personnel the total allocation of all funds available at the system level for staff development. At the end of the fiscal year, the principal shall make available to all affected personnel a report of all disbursements from the building-level staff development funds, and the superintendent shall make available to all affected personnel a report of all disbursements at the system level of staff development funds. (1993, c. 321, s. 144.2(c); 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. —
The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.25.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 2 and 3, effective June 21, 1996, recodified former G.S. 115C-238.6A as this section; in the first paragraph, substituted "school improvement plan at that school" for "local school improvement plan", and substituted "that plan" for "the building-level plan set out in the systemwide plan"; and added the first sentence in the second paragraph.

§ 115C-105.31. Creation of the Task Force on School-Based Management.

(a) There is created the Task Force on School-Based Management under the State Board of Education.

The Task Force shall be composed of 20 members appointed as follows:

(1) The Superintendent of Public Instruction;

(2) One member of the State Board of Education, one parent of a public school child, and two at-large members appointed by the State Board of Education;

(3) Two members of the Senate appointed by the President Pro Tempore of the Senate;

(4) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(5) One member of a local board of education appointed by the President Pro Tempore of the Senate after receiving recommendations from The North Carolina State School Boards Association, Inc.;

(6) One member of a local board of education appointed by the Speaker of the House of Representatives after receiving recommendations from The North Carolina State School Boards Association, Inc.;

(7) One local school superintendent appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of School Administrators;

(8) One local school superintendent appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of School Administrators;

(9) One school principal appointed by the President Pro Tempore of the Senate after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;

(10) One school principal appointed by the Speaker of the House of Representatives after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;

(11) One school teacher appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;

(12) One school teacher appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;

(13) One representative of business and industry appointed by the Governor;

(14) One representative of institutions of higher education appointed by the Board of Governors of The University of North Carolina; and

(15) One county commissioner appointed by the State Board of Education after receiving recommendations from the North Carolina Association of County Commissioners.

Members of the Task Force shall serve for two-year terms.

All members of the Task Force shall be voting members. Vacancies in the appointed membership shall be filled by the officer who made the initial appointment. The Task Force on School-Based Management shall select a member of the Task Force to serve as chair of the Task Force.

Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6.

(b) The Task Force shall:

(1) Advise the State Board of Education on the development of guidelines for local boards of education and schools to implement school-based management as part of the School-Based Management and Accountability Program;

(2) Advise the State Board of Education on how to assist the public schools so as to facilitate the implementation of school-based management;

(3) Advise the State Board of Education about publications to be produced by the Department of Public Instruction on the development and implementation of school improvement plans;

(4) Report annually to the State Board of Education on the implementation of school-based management in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve school-based management.

(c) The Department of Public Instruction shall, with the approval of the State Board of Education, provide staff to the Task Force at the request of the Task Force.

(d) The State Board of Education shall appoint a Director of the Task Force on School-Based Management. (1991 (Reg. Sess., 1992), c. 900, s. 76(a); 1993, c. 321, s. 144.2(d); 1993 (Reg. Sess., 1994), c. 677, s. 7; 1995, c. 324, s. 17.8(a); 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. —

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.26. The subdivision designations (a)(13), (a)(14), and (a)(15) were also assigned by the Revisor of Statutes, the designations in that act having been (a)(16), (a)(17), and (a)(18).

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 17.8(b) provides that the task force shall advise the State Board of Education on implementation of building-level plans and on how to facilitate the implementation of site-based management, shall review publications on the development and implementation of building-level plans, and shall report annually to the State Board of Education.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. —

The 1995 amendment, effective July 1, 1995, deleted "appointment of a Director of the Task Force of Site-Based Management" from the end of the catchline; in subsection (a) substituted "under the State Board of Education" for "within the Department of Public Instruction" in the first paragraph, substituted "20" for "21" in the introductory language of the second paragraph, deleted former subdivision (a)(13) regarding the Director of the Task Force on Site-Based Management, and in the next to last sentence deleted "Director of the" preceding "Task Force", and added "select a member of the Task Force"; substituted "Advise the State Board of Education on" for "Monitor" in subdivision (b)(1); substituted "State Board of Education" for "Director of the Task Force on Site-Based Management" in subdivision (b)(2); and substituted "State Board of Education" for "General Assembly and the Joint Legislative Education Oversight Committee" in subdivision (b)(4); added "with the approval of the State Board of Education" in subsection (c); and rewrote subsection (d).

Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 2 and 3, effective June 21, 1996, recodified former G.S. 115C-238.7 as this section; substituted "school-based" for "site-based" in the catchline and throughout the text of the section; added "one parent of a public school child, and two at-large members" to the end of subdivision (a)(1); deleted subdivision (a)(14), which read "One parent of a public school child appointed by the Superintendent of Public Instruction"; deleted subdivision (a)(15), which read "Two at-large members appointed by the Superintendent of Public Instruction"; substituted "State Board of Education" for "Superintendent of Public Instruction" in subdivision (a)(18); substituted "development of guidelines for local boards of education and schools to implement school-based management as part of the School-Based Management and Accountability Program" for "implementation of the School Improvement and Accountability Act of 1989, as amended, especially the development and implementation of building-level plans" in subdivision (b)(1); substituted "assist" for "provide training and assistance to" in subdivision (b)(2); and, in subdivision (b)(3), substituted "Advise the State Board of Education about publications to be" for "Review publications", and substituted "school improvement" for "building-level".

§ 115C-105.32. Parent involvement programs and conflict resolution programs as part of school improvement plans.

A school is encouraged to include a comprehensive parent involvement program as part of its school improvement plan under G.S. 115C-105.27. The State Board of Education shall develop a list of recommended strategies that it determines to be effective, which building level committees may use to establish parent involvement programs designed to meet the specific needs of their schools. The Board shall make the list available to local school administrative units and school buildings by the beginning of the 1994-95 school year.

A school is encouraged to review its need for a comprehensive conflict resolution program as part of the development of its school improvement plan under G.S. 115C-105.27. If a school determines that this program is needed, it may select from the list developed by the State Board of Education under G.S. 115C-81(a4) or may develop its own materials and curricula to be approved by the local board of education. (1993, c. 509, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 716, ss. 2, 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.27.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 2 and 3, effective June 21, 1996, recodified former G.S. 115C-238.8 as this section; substituted "school improvement" for "building-level" in the catchline; in the first sentence of the first and second paragraphs, deleted "Beginning with the 1994-95 school year" from the beginning, substituted "school improvement" for "building-level", and substituted "115C-105.22" [115C-105.27] for "115C-238.3"; and made related changes.

§§ 115C-105.33, 115C-105.34: Reserved for future codification purposes.

Part 3. School-Based Accountability.

§ 115C-105.35. Annual performance goals.

The School-Based Management and Accountability Program shall (i) focus on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each school in the State in order to measure the growth in performance of the students in each individual school. (1995 (Reg. Sess., 1996), c. 716, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 32, made this part effective upon ratification. The Act was ratified June 21, 1996.

The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.28.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 32(c), provides: "Part 3 of Article 8B of Chapter 115C of the General Statutes, as rewritten in Section 3 of this act, applies to any school that has any grades of kindergarten through eighth grade beginning with the 1996-97 school year, and to the remaining schools beginning with the 1997-98 school year. The State Board shall establish appropriate deadlines for the development of school improvement plans after July 1, 1996."

§ 115C-105.36. Performance recognition.

(a) The personnel in schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, "personnel" includes the principal, assistant principal, instructional personnel, instructional support personnel, and teacher assistants assigned to that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards to the local school administrative units in which the eligible schools are located. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure for:

(1) Awards to the personnel; or
(2) The purposes authorized in a plan that has been:
  a. Developed and voted on by the personnel in the same manner that a school improvement plan is approved under G.S. 115C-105.27;
  b. Approved by a majority of the personnel who vote on the plan; and
  c. Submitted to and approved by the local board of education.

The local board shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful. (1995 (Reg. Sess., 1996), c. 716, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.29.

§ 115C-105.37. Identification of low-performing schools.

(a) The State Board of Education shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(b) Each identified low-performing school shall notify the parents of students attending that school that the State Board of Education has found that the school has failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in that school are performing below grade level. This notification also shall include a description of the steps the school is taking to improve student performance. (1995 (Reg. Sess., 1996), c. 716, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.30.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 29(c), provides: "The State Board of Education shall develop a plan that encourages teachers to seek employment or remain employed in schools that have been identified as low-performing under G.S. 115C-105.30 [115C-105.37]. The plan shall include recommendations regarding additional compensation for (i) newly recruited teachers, and (ii) currently employed teachers whose students have shown significant improvement in academic performance. The State Board shall submit its plan to the Joint Legislative Education Oversight committee by December 15, 1996."

§ 115C-105.38. Assistance teams; review by State Board.

(a) The State Board of Education may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-performing schools in which the educational performance of the students is declining. The Department of Public Instruction shall, with the approval of the State Board, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

(1) Review and investigate all facets of school operations and assist in developing recommendations for improving student performance at that school.

(2) Evaluate at least semiannually the personnel assigned to the school and make findings and recommendations concerning their performance.

(3) Collaborate with school staff, central offices, and local boards of education in the design, implementation, and

monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.

(4) Make recommendations as the school develops and implements this plan.

(5) Review the school's progress.

(6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.27 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.

(c) If a school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continues or that the State Board take further action under G.S. 115C-105.39.

(d) The State Board shall annually review the progress made in identified low-performing schools. (1995 (Reg. Sess., 1996), c. 716, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Law 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.31.

§ 115C-105.39. Dismissal or removal of personnel; appointment of interim superintendent.

(a) Upon the identification of a school as low-performing under this Part, the State Board shall proceed under G.S. 115C-325(q)(1) for the dismissal of the principal assigned to that school.

(b) The State Board shall proceed under G.S. 115C-325(q)(2) for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with G.S. 115C-325(q)(2).

(c) The State Board may appoint an interim superintendent in a local school administrative unit:

(1) Upon the identification of more than half the schools in that unit as low-performing under G.S. 115C-105.37; or

(2) Upon the recommendation from an assistance team assigned to a school located in that unit that has been identified as low-performing under G.S. 115C-105.37. This recommendation shall be based upon a finding that the superintendent has failed to cooperate with the assistance team or has otherwise hindered that school's ability to improve.

The State Board may assign any of the powers and duties of the local superintendent and the local finance officer to the interim superintendent that the Board considers are necessary or appropriate to improve student performance in the local school administrative unit. The interim superintendent shall perform all of these assigned powers and duties. The State Board of Education may terminate the contract of any local superintendent entered into on or after July 1, 1996, when it appoints an interim superintendent.

The Administrative Procedure Act shall apply to that decision. Neither party to that contract is entitled to damages.

(d) In the event the State Board has appointed an interim superintendent and the State Board determines that the local board of education has failed to cooperate with the interim superintendent or has otherwise hindered the ability to improve student performance in that local school administrative unit or in a school in that unit, the State Board may suspend any of the powers and duties of the local board of education that the State Board considers are necessary or appropriate to improve student performance in the local school administrative unit. The State Board shall perform all of these assigned powers and duties for a period of time to be specified by the State Board.

(e) If the State Board suspends any of the powers and duties of the local board of education under subsection (d) of this section and subsequently determines it is necessary to change the governance of the local school administrative unit in order to improve student performance, the State Board may recommend this change to the General Assembly, which shall consider, at its next session, the future governance of the identified local school administrative unit. (1995 (Reg. Sess., 1996), c. 716, s. 3.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 3, having been 115C-105.32.

§§ 115C-105.40 through 115C-105.44: Reserved for future codification purposes.

ARTICLE 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 23.20, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al.; s. 23.20(c) provides that funds appropriated to the Department of Public Education for members of the Willie M. Class are to establish a supplemental reserve fund to serve only members of the Class, and that these funds shall be allocated by the State Board of Education to the local education agencies to serve those Class members who were not included in the regular average daily membership and the census of children with special needs, and to provide the additional program costs which exceed the per pupil allocation from the State Public School Fund and other State and federal funds for children with special needs.

Session Laws 1995, c. 324, s. 23.20(e),

provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class, which shall include specified data for each county; and s. 23.20(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1995, c. 324, s. 23.20(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

§ 115C-109. Definition of children with special needs.

The term "children with special needs" includes, without limitation, all children from age five through age 20 who because of permanent or temporary mental, physical or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiply handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually impaired, and other health impaired. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1034, ss. 23, 24; 1985, c. 780, ss. 3, 4; 1996, 2nd Ex. Sess., c. 18, s. 18.24(b).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "and other health impaired" for "other health impaired, and academically gifted" at the end.

OPINIONS OF ATTORNEY GENERAL

Sharing of Educational Records. — This section, §§ 115C-110(a) and 115C-403(b) represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Human Resources and Correction.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Human Resources and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Human Resources and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Human Resources and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Human Resources and the Department of Correction for the provision of special education and related services and the power to review, revise and approve said Departments' plans for special education and related services to those residents.

The Departments of Human Resources and Correction shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Human Resources and Correction. The Board may grant specific exemptions for programs administered by the Department of Human Resources or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on such Department and when other procedural due process requirements, substantially equivalent to those of G.S.

115C-116, are assured in programs of special education and related services furnished to children with special needs served by such Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Human Resources and Correction may require more program resources than those necessary for optimal operation of such programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;
(2) A procedure for diagnosis and evaluation of each such child;
(3) An inventory of the personnel and facilities available to provide special education for such children;
(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;
(5) Standards for the education of children with special needs;
(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and
(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment pursuant to subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules or regulations covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;
(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and
(3) Such other rules or regulations as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Human Resources and Correction shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;

(2) A statement of the extent to which standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule or regulation, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to such annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except such fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Human Resources shall not prevent that Department from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(*l*) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, ss. 3, 4; 1989, c. 585, s. 3; 1996, 2nd Ex. Sess., c. 18, ss. 18.24(c), (d).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, ss. 18.24(c) and 18.24(d), effective July 1, 1996, in subdivision (d)(2) deleted "the academically gifted and" following "other than for," and deleted "the group educational program for the academically gifted children and" preceding "the educational program"; and in subsection (k) deleted "academically gifted and" following "special needs other than," and deleted "and of group educational programs in meeting the educational needs of the academically gifted children" preceding "and of educational programs."

CASE NOTES

Applicability. — When a more generally applicable statute such as § 115C-366(a) conflicts with a more specific, special statute such as this section, the special statute is viewed as an exception to the provisions of the general statute. Accordingly, the specific requirements of subsection (i) of this section control where they are in conflict with the general requirements of § 115C-336(a). Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Place of Actual Abode Determinative of Education Entitlement. — Where child's place of actual abode was clearly in county where he lived with his grandmother, he was a legal resident of the county so long as he continued to live there and was thus entitled to a free appropriate education in this county. Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

OPINIONS OF ATTORNEY GENERAL

Sharing of Educational Records. — Sections 115C-109, 115C-403(b) and subsection (a) of this section represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

The effect of subsection (a) is to make the various divisions and agencies of the Department of Human Resources engaged in providing educational opportunities to school age children with "special needs" the functional equivalent of a local school administrative unit. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

Part 2. Nondiscrimination in Education.

§ 115C-112: Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 20, effective June 21, 1996.

§ 115C-113. Diagnosis and evaluation; individualized education program.

(a) Before taking any action described in subsection (b), below, each local educational agency shall cause a multi-disciplinary diagnosis and evaluation to be made of the child. The State Board of Education shall establish special, simplified procedures for the diagnosis and evaluation of the pregnant child, which procedures shall focus on the particular needs of the pregnant child and shall exclude those procedures which are not pertinent to the pregnant. The local educational agency shall use the diagnosis and evaluation to determine if the child has special needs, diagnose and evaluate those needs, propose special education programs to meet those needs, and provide or arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one which includes, without limitation, medical (if necessary), psychological (if necessary) and educational assessments and recommendations; such an evaluation may include any other assessments as the Board may, by rule or regulation, require.

All testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(b) An initial multi-disciplinary diagnosis and evaluation based on rules developed by the Board shall be made before any such child is placed in a special education program, removed from such a program and placed in a regular school program, transferred from one type of special education program to another, removed from a school program for placement in a nonschool program, or otherwise tracked, classified, or treated as a child with special needs.

(c) Referral of any child shall be in writing, signed by the person requesting diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or delivered to one of the following: the child's teacher, the principal of the school to which the child is, has been or will be assigned, or the superintendent of the affected local educational agency or his designee. The local educational agency shall send a written notice to the parent or guardian describing the evaluation procedure to be followed and requesting consent for the evaluation. If the parents or guardian consent, the diagnosis and evaluation may be undertaken; if they do not, the local educational agency may obtain a due process hearing pursuant to G.S. 115C-116 on the failure of the parent or guardian to consent.

The local educational agency shall provide or cause to be provided, as soon as possible after receiving consent for evaluation, a diagnosis and evaluation appropriate to the needs of the child unless the parents or guardian have objected to such evaluation. If at the conclusion of the evaluation, the child is determined to be a child with special needs, the local educational agency shall within 30 calendar days convene an individualized education program committee. The purpose of the meeting shall be to propose the special education and related services for the child. An interpretation of the multi-disciplinary diagnosis and evaluation will be made to the parent or guardian during the meeting. The proposal shall set forth the specific benefits expected from such a program, a method for monitoring the benefits, and a statement regarding conditions which will be considered indicative of the child's readiness for participation in regular classes.

After an initial referral is made, the provision of special education and related services shall be implemented within 90 calendar days to eligible students, unless the parents or guardian refuse to consent to evaluation or placement or the parent or local educational agency requests a due process hearing.

Within 12 months after placement in a special education program, and at least annually thereafter, those people responsible for developing the child's individualized education program, or educational program for the pregnant, shall review the child's progress and, on the basis of previously stated expected benefits, decide whether to continue or discontinue the placement or program. If the review indicates that the placement or program does not benefit the child, the appropriate reassignment or change in the prescribed program shall be recommended to the parents or guardian.

The local educational agency shall keep a complete written record of all diagnostic and evaluation procedures attempted, their results, the conclusions reached, and the proposals made.

(d) The local educational agency shall furnish the results, findings, and proposals, as described in the individualized education program based on the diagnosis and evaluation to the parents or guardian in writing in the parents' or guardian's native language or by their dominant mode of communication, prior to the parent or guardian giving consent for initial placement in special education and related services. Prior notice will be given to the parents or guardian by the local educational agency before any change in placement.

A reevaluation must be completed at least every three years to determine the appropriateness of the child's continuing to receive special education and related services.

(e) Each local educational agency shall make and keep current a list of all children evaluated and diagnosed pursuant to this section who are found to have special needs and of all children who are receiving home, hospital, institutional or other special education services, including those being educated within the regular classroom setting or in other special education programs.

(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term "individualized educational program" means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Human Resources, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent.

(g) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.24(e), effective July 1, 1996.

(h) Each local educational agency shall prepare educational programs for the pregnant children. The State Board of Education shall promulgate rules and regulations specifically to address the preparation of these educational programs, which rules and regulations shall include specific standards for ensuring that the individual educational needs of each child are addressed. (1977, c. 927, s. 1; 1981, c. 423, s. 1; 1983, c. 247, s. 4; 1989, c. 388; 1991, c. 142, s. 1; c. 761, s. 35; 1996, 2nd Ex. Sess., c. 18, s. 18.24(e).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, deleted "group educational program for the academically gifted" following "individualized education program" in the next to last paragraph of subsection (c); in subsection (d) deleted "or group educational program" following "individualized education program" in the first paragraph, deleted "Provided, that a reevaluation for an academically gifted child shall be completed within three years of initial evaluation for a child who has been identified as academically gifted prior to the second semester of the third grade" from the first sentence of the second paragraph, deleted the second sentence of the second paragraph, which read "For a child who is identified as academically gifted during the second semester of the third grade or thereafter, no reevaluation is required"; in subsection (f) deleted "academically gifted and" following "special needs other than the," deleted "and group educational programs prescribed in subsection (g) of this section for the academically gifted children" preceding "and educational programs prescribed"; and deleted former subsection (g) regarding group educational programs for academically gifted children.

§ 115C-114. Records; privacy and expunction.

OPINIONS OF ATTORNEY GENERAL

Transmittal of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS), and other Department of Human Resources (DHR) agencies providing educational services to school age children, any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

Part 3. Appeals.

§ 115C-116. Notice of decisions; mediation, administrative review, and judicial review of disagreements.

CASE NOTES

Failure to Follow Time Limitations. — Plaintiffs who did not file a petition for a contested case under this section within the time limit prescribed by § 150B-23, abandoned the process and sought relief in the courts without exhausting the available administrative remedies; therefore, they were barred from seeking relief in federal district court. Glen III ex rel. Glen II v. Charlotte-Mecklenburg Sch. Bd., 903 F. Supp. 918 (W.D.N.C. 1995).

ARTICLE 9A.

Children with Chemical Dependency.

§§ 115C-150.1 through 115C-150.4: Reserved for future codification purposes.

ARTICLE 9B.

Academically or Intellectually Gifted Students.

§ 115C-150.5. Academically or intellectually gifted students.

The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared with others of their age, experience, or environment. Academically or intellectually gifted students exhibit high performance capability in intellectual areas, specific academic fields, or in both intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated educational services beyond those ordinarily provided by the regular educational program. Outstanding abilities are present in students from all cultural groups, across all economic strata, and in all areas of human endeavor. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this article effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 115C-150.6. State Board of Education responsibilities.

In order to implement this Article, the State Board of Education shall:

(1) Develop and disseminate guidelines for developing local plans under G.S. 115C-150.7(a). These guidelines should address identification procedures, differentiated curriculum, integrated services, staff development, program evaluation methods, and any other information the State Board considers necessary or appropriate.

(2) Provide ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-150.7. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

§ 115C-150.7. Local plans.

(a) Each local board of education shall develop a local plan designed to identify and establish a procedure for providing appropriate educational services to each academically or intellectually gifted student. The board shall include parents, the school community, representatives of the community, and others in the development of this plan. The plan may be developed by or in conjunction with other committees.

(b) Each plan shall include the following components:

(1) Screening, identification, and placement procedures that allow for the identification of specific educational needs and for the assignment of academically or intellectually gifted students to appropriate services.

(2) A clear statement of the program to be offered that includes different types of services provided in a variety of settings to meet the diversity of identified academically or intellectually gifted students.

(3) Measurable objectives for the various services that align with core curriculum and a method to evaluate the plan and the services offered. The evaluation shall focus on improved student performance.

(4) Professional development clearly matched to the goals and objectives of the plan, the needs of the staff providing

services to academically or intellectually gifted students, the services offered, and the curricular modifications.

(5) A plan to involve the school community, parents, and representatives of the local community in the ongoing implementation of the local plan, monitoring of the local plan, and integration of educational services for academically or intellectually gifted students into the total school program. This should include a public information component.

(6) The name and role description of the person responsible for implementation of the plan.

(7) A procedure to resolve disagreements between parents or guardians and the local school administrative unit when a child is not identified as an academically or intellectually gifted student or concerning the appropriateness of services offered to the academically or intellectually gifted student.

(8) Any other information the local board considers necessary or appropriate to implement this Article or to improve the educational performance of academically or intellectually gifted students.

(c) Upon its approval of the plan developed under this section, the local board shall submit the plan to the State Board of Education for its review and comments. The local board shall consider the comments it receives from the State Board before it implements the plan.

(d) A plan shall remain in effect for no more than three years; however, the local board may amend the plan as often as it considers necessary or appropriate. Any changes to a plan shall be submitted to the State Board of Education for its review and comments. The local board shall consider the State Board's comments before it implements the changes. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 18.24(*l*), provides: "The State Board of Education shall establish deadlines for local school administrative units to implement the local plans developed under G.S. 115C-150.7. All local school administrative units shall begin implementation of their local plans by the beginning of the 1998-99 school year."

§ 115C-150.8. Review of Disagreements.

In the event that the procedure developed under G.S. 115C-150.7(b)(7) fails to resolve a disagreement, the parent or guardian may file a petition for a contested case hearing under Article 3 of Chapter 150B of the General Statutes. The scope of review shall be limited to (i) whether the local school administrative unit improperly failed to identify the child as an academically or intellectually gifted student, or (ii) whether the local plan developed under G.S. 115C-150.7 has been implemented appropriately with regard to the child. Following the hearing, the administrative law judge shall make a decision that contains findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final, is binding on the parties, and is not subject to further review under Article 4 of Chapter 150B of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 18.24(f).)

ARTICLE 10A.

Testing.

Part 1. Commission on Testing.

§§ 115C-174.1 through 115C-174.6: Repealed by Session Laws 1995, c. 524, s. 1, effective July 29, 1995.

§§ 115C-174.7 through 115C-174.9: Reserved for future codification purposes.

Part 2. Statewide Testing Program.

§ 115C-174.10. Purposes of the Statewide Testing Program.

The three testing programs in this Article have three purposes: (i) to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society; (ii) to provide a means of identifying strengths and weaknesses in the education process in order to improve instructional delivery; and (iii) to establish additional means for making the education system at the State, local, and school levels accountable to the public for results. (1977, c. 522, s. 1; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1995, c. 524, s. 2.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, inserted "in order to improve instructional delivery" following "process" in subdivision (ii), and inserted "at the State, local, and school levels" following "educational system" in subdivision (iii).

§ 115C-174.11. Components of the testing program.

(a) Assessment Instruments for First and Second Grades. — The State Board of Education shall adopt and provide to the local school administrative units developmentally appropriate individualized assessment instruments consistent with the Basic Education Program for the first and second grades, rather than standardized tests. Local school administrative units may use these assessment instruments provided to them by the State Board for first and second grade students, and shall not use standardized tests.

(b) Competency Testing Program.

(1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.

(2) The tests shall be administered annually to all tenth grade students in the public schools. Students who fail to attain

the required minimum standard for graduation in the tenth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the tenth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.

(3) The State Board of Education may develop and validate alternate means and standards for demonstrating minimum competence. These standards, which must be more difficult than the tests adopted pursuant to subdivision (1) of this subsection, may be passed by students in lieu of the testing requirement of subdivision (2) of this subsection.

(4) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.14, effective July 1, 1996.

(c) Annual Testing Program.

(1) The State Board of Education shall adopt a system of annual testing for grades three through 12. These tests shall be designed to measure progress toward reading, communication skills, and mathematics for grades three through eight, and toward competencies designated by the State Board for grades nine through 12.

(2) If the State Board of Education finds that additional testing in grades three through 12 is desirable to allow comparisons with national indicators of student achievement, that testing shall be conducted with the smallest size sample of students necessary to assure valid comparisons with other states. (1977, c. 522, s. 1; c. 541, s. 1; 1981, c. 423, s. 1; 1983, c. 627, s. 1; 1985, c. 409, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1987, c. 738, s. 180(a); 1987 (Reg. Sess., 1988), c. 1086, s. 77(a); 1989, c. 778, ss. 4, 5; 1995, c. 524, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 18.14.)

Editor's Note. —

Session Laws 1995, c. 524, ss. 5, 6, provide that except as provided in subdivision (c)(2), the State Board of Education shall adopt no new tests until it receives the report on standards and a system of assessment. Pending the receipt of this report, the State Board of Education shall consider reducing the number of tests currently administered by the State. The State Board of Education shall consider the recommendations of the Education Standards and Accountability Commission and shall review the tests being administered through State and local testing programs.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted the current subcatchline in subsection (a) for "Annual Testing Program"; deleted the last sentence of the first paragraph in subsection (a) regarding a report to the Joint Legislative Commission on Governmental Operations; deleted the second paragraph in subsection (a) regarding testing of students in grades other than the first and second; and rewrote subsection (c).

The 1996 Second Extra Session amendment, effective July 1, 1996, deleted former subdivision (b)(4), regarding funds appropriated for remediation support for students who fail the high school competency test.

§ 115C-174.12. Responsibilities of agencies.

(a) The State Board of Education shall review the tests being administered through State and local testing programs and shall select the tests that it believes are necessary to provide the best measures of the levels of academic achievement attained by students in various subject areas. The State Board of Education shall also establish policies and guidelines necessary for minimizing the time students spend taking tests administered through State and local testing programs and for otherwise carrying out the provisions of this Article.

The State Board of Education may appoint an Advisory Council on Testing to assist in carrying out its responsibilities under this Article.

(b) The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article.

(c) Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units shall use the annual and competency testing programs to fulfill the purposes set out in this Article. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student needs further. (1977, c. 522, ss. 4-6; c. 541, ss. 2, 5-7; 1981, c. 423, ss. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 74(a); 1995, c. 524, s. 4.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in subsection (a), in the first sentence substituted "tests being administered through State and local testing programs and shall" for "recommendations of the Commission on Testing and", following "believes" substituted "are necessary to" for "will", and inserted "minimizing the time students spend taking tests administered through Sate and local testing programs and for otherwise"; added the second paragraph in subsection (a); and deleted "and for providing necessary staff services to the Commission" from the end of subsection (b).

ARTICLE 13.

Community Schools Act.

§ 115C-206. State Board of Education; duties; responsibilities.

The Superintendent of Public Instruction shall prepare and present to the State Board of Education recommendations for general guidelines for encouraging increased community involvement in the public schools and use of public school facilities. These recommendations shall include, but shall not be limited to provisions for:

(1) The use of public school facilities by governmental, charitable or civic organizations for activities within the community.

(2) The utilization of the talents and abilities of volunteers within the community for the enhancement of public school

programs including tutoring, counseling and cultural programs and projects.

(3) Increased communications between the staff and faculty of the public schools, other community institutions and agencies, and citizens in the community.

Based on the recommendations of the Superintendent of Public Instruction, the State Board of Education shall adopt appropriate policies and guidelines for encouraging increased community involvement in the public schools and use of the public school facilities. (1977, c. 682; 1981, c. 423, s. 1; 1995, c. 450, s. 8.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, deleted the second sentence of the first paragraph regarding the superintendent's consultation with the interagency council in preparing the general guidelines, and deleted the third and fourth paragraphs regrading the State Board of Education establishing rules and regulations for encouraging increased community involvement and the use of public school facilities, and allocating funds for the employment of community school coordinators and other expenses of community schools programs.

§ 115C-207. Authority and responsibility of local boards of education.

Every local board of education that uses State funds to implement programs under this Article shall:

(1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by the State Board of Education.

(2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by the State Board of Education.

(3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education may provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall establish the terms and conditions of employment for the community schools coordinators.

Every local board of education using State funds to implement a community schools program under this Article may enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of these State funds. (1977, c. 682; 1981, c. 423, s. 1; 1995, c. 450, s. 9.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "that uses State funds to implement programs under" for "which elects to apply for funding pursuant to" in the introductory language of the first paragraph, substituted "may" for "shall" in the first sentence of the second paragraph, and rewrote the third paragraph.

§ 115C-208. Community schools advisory councils; duties; responsibilities; membership.

Every local board of education that establishes a community schools program under this Article may establish one or more community schools advisory councils which may become involved in matters affecting the educational process in accordance with rules established by the local board of education and approved by the State Board of Education and further may consider ways of increasing community involvement in the public schools and utilization of public school facilities. Community schools advisory councils may assist local boards of education in the development and preparation of the plans and programs to achieve such goals, may assist in the implementation of such plans and programs and may provide such other assistance as may be requested by the local boards of education.

Community schools advisory councils may work with local school officials and personnel, parent-teacher organizations, and community groups and agencies in providing maximum opportunities for public schools to serve the communities, and may encourage the maximum use of volunteers in the public schools.

At least one half of the members of each community schools advisory council should be the parents of students in the particular public school system: Provided, that less than twenty-five percent (25%) of the pupils attending a particular school reside outside the immediate community of the school, at least one half of the members should be parents of students in the particular school for which the advisory council is established. Wherever possible the local board of education is encouraged to include at least one high school student. The size of the councils and the terms of membership on the councils shall be determined by the local board of education in accordance with the State guidelines. (1977, c. 682; 1979, c. 828; 1981, c. 423, s. 1; 1995, c. 450, s. 10.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in the first sentence of the first paragraph deleted "participating" following "Every", substituted "that establishes a community schools program under this Article may" for "shall", and substituted "may" for "shall" preceding "consider ways"; substituted "may" for both occurrences of "shall" in the second paragraph; and substituted "should" for both occurrences of "shall" in the first sentence of the third paragraph.

§ 115C-209. Community schools coordinators.

Every local board of education may employ one or more community schools coordinators and shall establish the terms and conditions of their employment. Community schools coordinators shall be responsible for:

(1) Providing support to the community schools advisory councils and public school officials.

(2) Fostering cooperation between the local board of education and appropriate community agencies.

(3) Encouraging maximum use of community volunteers in the public schools.

(4) Performing any other duties as may be assigned by the local superintendent and the local board of education, consistent

with the purposes of this Article. (1977, c. 682; 1981, c. 423, s. 1; 1995, c. 450, s. 11.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in the first sentence of the introductory language deleted "participating" following "Every", and substituted "may" for "shall" preceding "employ"; and substituted "any" for "such" in subdivision (4).

ARTICLE 16.

Optional Programs.

Part 4. Performance-based Accountability Program.

§§ 115C-238.1 through 115C-238.4: Recodified as §§ 115C-105.20 through 115C-105.28.

Editor's Note. — This Part was recodified as Article 8B of Chapter 115 by Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 2. G.S. 115C-238.5 was previously repealed by Session Laws 1995, c. 450, s. 14, effective July 1, 1995.

§ 115C-238.5: Repealed by Session Laws 1995, c. 450, s. 14, effective July 1, 1995.

§§ 115C-238.6 through 115C-238.8: Recodified as §§ 115C-105.29 through 115C-105.32.

Part 5. Outcome-Based Education Program.

§§ 115C-238.12 through 115C-238.19: Repealed by Session Laws 1995, c. 324, s. 17.2, effective July 1, 1995.

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

§§ 115C-238.20, 115C-0238.21: Reserved for future codification purposes.

Part 6. Project Genesis Program.

§ 115C-238.23. Implementation by local school boards.

If a school administrative unit decides to proceed with the project the following procedures shall be followed:

(a) The local board in a participating local school administrative unit shall select a school building that is under construction as its first school under the project.

(b) The local board shall issue a request for proposals for leadership teams to bid to operate the selected school. A team shall mean three or more individuals. To reflect the diversity required to implement the purpose of the project defined in G.S. 115C-238.22, the abilities and experience of team members may include: administrative and educational policy and planning skills; familiarity with technology for schools; management and classroom experience; and familiarity with the needs of diverse and special populations. One member shall be designated as the principal or leader of the team. At least twenty-five percent (25%) of the team members shall be certificated in accordance with the regulations of the State Board of Education.

Team members awarded the contract shall, if not already, become employees of the local board and become subject to local personnel policies.

(c) The request for proposals shall include the following minimum requirements:

(1) A statement of principles that the local board wants the bidding teams to address;
(2) A specified amount of money available for the operation of the building, which amount shall be within the limits of funds available for the size of school being opened for bid;
(3) A framework for accountability plans by which the success of the project site can be measured, which accountability plans shall include the student performance indicators adopted by the State Board of Education pursuant to the School Improvement and Accountability Act of 1989, and shall include factors such as student, parent, and employee satisfaction, parental involvement, community service, and evidence of a focus on developing thinking and reasoning skills;
(4) The student population of a Genesis school shall be representative of its local school administrative unit, shall be racially balanced, and students shall be assigned on a geographic basis;
(5) The mission of the school shall not establish religion nor prohibit the free exercise thereof insofar as that is permitted in a public school by the North Carolina and United States Constitutions; and
(6) Bidding teams shall address how the criteria listed in G.S. 115C-81(b) will be met or varied by the Genesis program.

The local board may include other requirements in the request for proposals.

(d) The local board shall secure private funding for any additional non-State and nonlocal funds required for the project before awarding a contract to a team to operate the selected school.

(e) The local board shall appoint an advisory committee composed of educators, elected officials, parents of children enrolled in the local school administrative unit, and community leaders from within and without the local school administrative unit to screen proposals for the school building and to make recommendations to the local board of education on the proposals.

The local board shall consider the recommendations of the advisory committee and shall award the contract. All contract negotiations and the award of the contract shall be conducted in open session notwithstanding G.S. 143-318.11(a)(9). The contract shall be for a term not to exceed four years. It may be terminated by the local board at any time for any reason it deems sufficient; it may be terminated by the team for any reason it deems sufficient, but only at the end of a school year and only with 60 days' written notice to the local board of education.

(f) The team that receives the contract shall interview and select all personnel for the building. The team may select personnel from the current employees of the local board. All teachers employed in a Genesis school shall hold or be qualified to hold a certificate in accordance with the regulations of the State Board of Education or the School Improvement and Accountability Act of 1989. The local board shall hire those persons selected by the team so long as those positions are within State, local, and other funds approved for this project by the local board. In no event shall a local board dismiss or demote any employee pursuant to G.S. 115C-325(e)(1)l. as a result of a Genesis project.

Hiring shall take place no later than July 1, prior to the opening of the new building. The team shall begin conducting training and planning sessions as staff is hired.

The local board or the management team may employ noncertificated persons on a temporary basis or for special projects.

(g) The participating school building team shall initiate a comprehensive accountability program immediately. The results shall be published annually and compared to those of traditional schools.

(h) After the third and fourth years of the project, the local board shall review student achievement results of the existing project site. After the fourth year of the project the local board may decide whether to continue the project in the first school and whether an additional building within the school system shall be added to the project. If the board decides to expand the project to a second school the procedures outlined in this section shall be followed.

The second school chosen for the project shall be an existing school that is producing below average results in student achievement as compared to other schools in the unit. Criteria which may be considered to evaluate student achievement may include: test scores, the success of graduating students, attendance, graduation and dropout rates, the numbers of children enrolled in free lunch or Chapter 1 programs, the education level of the parents of children enrolled in the school, the teaching experience of the school staff, and whether the building has been successful in meeting the goals of the systemwide plan developed in accordance with the School Improvement and Accountability Act of 1989. (1991 (Reg. Sess., 1992), c. 999, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 23.)

Editor's Note. —

The School Improvement and Accountability Act of 1989, referred to above, is Session Laws 1989, c. 778. That act created the Performance-based Accountability Program and amended sections regarding testing and annual report cards for schools.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted "or G.S. 115C-238.6" from the end of the first paragraph of subsection (b); substituted "the School Improvement and Accountability Act of 1989" for "G.S. 115C-238.1(3)" in subdivision (c)(3); substituted "the School Improvement and Accountability Act of 1989" for "G.S. 115C-238.6" in subdivision (f); and, in subdivision (h), substituted "achievement" for "outcome" in the first sentence of the first paragraph, and substituted "the School Improvement and Accountability Act of 1989" for "G.S. 115C-238.1 through G.S. 115C-238.6" in the last sentence of the second paragraph.

§§ 115C-238.26 through 115C-238.29: Reserved for future codification purposes.

Part 6A. Charter Schools.

§ 115C-238.29A. Purpose.

The purpose of this Part is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to accomplish all of the following:

(1) Improve student learning;
(2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
(3) Encourage the use of different and innovative teaching methods;
(4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
(5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
(6) Hold the schools established under this Part accountable for meeting measurable student achievement results, and provide the schools with a method to change from rule-based to performance-based accountability systems. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 5, made this part effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 1, provides that this act shall be known as the Charter Schools Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 731, s. 4, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act. In addition, all charters granted and all contracts entered into under this act are subject to any future appropriations and subsequent legislative changes."

§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications for approval.

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school within a local school administrative unit may apply to establish a charter school on behalf of a private nonprofit corporation. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall contain at least the following information:

(1) A description of a program that implements one or more of

the purposes in G.S. 115C-238.29A.

(2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.

(3) The governance structure of the school including the process to be followed by the school to ensure parental involvement.

(4) Admission policies and procedures.

(5) A proposed budget for the school and evidence that the plan for the school is economically sound.

(6) Requirements and procedures for program and financial audits.

(7) A description of how the school will comply with G.S. 115C-238.29F.

(8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.

(9) The term of the contract.

(10) The qualifications required for individuals employed by the school.

(11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(12) The number of students to be served, which number shall be at least 65, and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than 65 students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population.

(13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.

(14) A description of whether the school will operate independently of the local board of education or whether it agrees to be subject to some supervision and control of its administrative operations by the local board of education. In the event the charter school elects to operate independently of the local board of education, the application must specify which employee benefits will be offered to its employees and how the benefits will be funded.

(c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:

(1) The local board of education of the local school administrative unit in which the charter school will be located;

(2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or

(3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29C. Preliminary approval of applications for charter schools.

(a) The chartering entity that receives a request for preliminary approval of a charter school shall act on each request received prior to November 1 of a calendar year by February 1 of the next calendar year.

(b) The chartering entity shall give preliminary approval to the application if the chartering entity determines that (i) information contained in the application meets the requirements set out in this Part or adopted by the State Board of Education, (ii) the applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner, and (iii) granting the application would improve student learning and would achieve one of the other purposes set out in G.S. 115C-238.29A. In reviewing applications for the establishment of charter schools within a local school administrative unit, the chartering entity is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure. If the chartering entity approves more than one application for charter schools located in a local school administrative unit, the chartering entity may state its order of preference among the applications that it approves.

(c) If a chartering entity other than the State Board disapproves an application, the applicant may appeal to the State Board of Education prior to February 15. The State Board shall consider the appeal at the same time it is considering final approval in accordance with G.S. 115C-238.29D. The State Board shall give preliminary approval of the application if it finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the application, failed to consider appropriately the application, or failed to act within the time set out in G.S. 115C-238.29C.

If the chartering entity, the State Board of Education, or both, disapprove an application, the applicant may modify the application and reapply subject to the application deadline contained in subsection (a) of this section. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29D. Final approval of applications for charter schools.

(a) The State Board shall grant final approval of an application if it finds that the application meets the requirements set out in this Part or adopted by the State Board of Education and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.

(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant a charter for a period not to exceed five years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed five years each. A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29E. Charter school operation.

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education for purposes of ensuring compliance with applicable laws and the provisions of its charter.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application.

(c) A charter school shall operate under a written contract signed by the local board of education and the applicant. The contract shall incorporate at a minimum the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education.

If the local board of education does not sign the contract, the State Board may sign on behalf of the local board.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school shall be located in the local school administrative unit with which it signed the contract. Its specific location shall not be prescribed or limited by a local board or other authority except a zoning authority. The school may lease space from a local board of education, from a public or private nonsectarian organization, or as is otherwise lawful in the local school administrative unit in which the charter school is located.

(f) Except as provided in this Part and pursuant to the provisions of its contract, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. — A charter school shall meet the same health and safety requirements required of a local school administrative unit.

(b) School Nonsectarian. — A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. —

(1) The board of directors of a charter school may sue and be sued. The board of directors shall obtain at least the amount of and types of insurance required by the contract.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. In the event a charter school has not elected total independence from the local board of education under subsection (e) of this section, the immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(d) Instructional Program. —

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the contract with the local board of education.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes; except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its contract.

(e) Employees. —

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

(2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.

(3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter school, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. The local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).

(4) In the event a charter school, in its application, elects total independence from the local board of education, its employees shall not be deemed to be employees of the local school administrative unit and shall not be entitled to any State-funded employee benefits, including membership in the North Carolina Teachers' and State Employees' Retirement System or the Teachers' and State Employees' Comprehensive Major Medical Plan. In the event a charter school, in its application, agrees to be subject to some supervision and control of its administrative operations by the local board of education, the employees of the charter school will be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The Board of Trustees of the Teachers' and State Employees' Retirement System, in consultation with the State Board of Education, shall determine the degree of supervision and control necessary to qualify the employees of the applicant for membership in the Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. —

(1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools.

(2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.

(3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. —

(1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.

(2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.

(3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.

(4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides, except that the provisions of G.S. 115C-366(d) shall apply to a student who wishes to attend a charter school in a county other than the county in which the student resides.

(5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the contract, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.

(6) The school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students shall be accepted by lot.

(7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. — The charter school shall provide transportation for students enrolled at the school who reside in the local school administrative unit in which the school is located. The charter school may provide transportation for students enrolled at the school who reside in different local school administrative units.

(i) Assets. — Upon dissolution of the charter school or upon the nonrenewal of the charter, all assets of the charter school shall be deemed the property of the local school administrative unit in which the charter school is located. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29G. Causes for nonrenewal or termination.

The State Board of Education, or a chartering entity subject to the approval of the State Board of Education, may terminate or not renew a contract upon any of the following grounds:

(1) Failure to meet the requirements for student performance contained in the contract;

(2) Failure to meet generally accepted standards of fiscal management;

(3) Violations of law;

(4) Material violation of any of the conditions, standards, or procedures set forth in the contract;

(5) Two-thirds of the faculty and instructional support personnel at the school request that the contract be terminated or not renewed; or

(6) Other good cause identified.

The State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering entity during the time of its charter. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29H. State and local funds for a charter school.

(a) The State Board of Education shall allocate to each charter school (i) an amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with special needs and (ii) an additional amount for each child attending the charter school who is a child with special needs.

Funds allocated by the State Board of Education shall not be used to purchase land or buildings. The school may own land and buildings it obtained through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter School Advisory Committee.

(a) The State Board of Education shall distribute information announcing the availability of the charter school process described in this Part to each local school administrative unit and public postsecondary educational institution and, through press releases, to each major newspaper in the State.

(b) The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations the following information:

(1) The current and projected impact of charter schools on the delivery of services by the public schools;

(2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation; and

(3) Best practices resulting from charter school operations.

The State Board of Education shall base its report in part upon the annual reports submitted by the charter schools under G.S. 115C-238.29F(f)(3). To the extent possible, the State Board of Education shall present the information in disaggregated form relative to the race, gender, grade level, and economic condition of the students.

(c) The State Board of Education shall review the educational effectiveness of the charter school approach authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located and, not later than January 1, 1999, shall report to the Joint Legislative Education Oversight Committee with recommendations to modify, expand, or terminate that approach. Analysis of the reports submitted under subsection (b) of this section shall be the predominant factor in determining whether the number of charter schools shall be increased and the conditions under which any increase or continued operation shall be allowed. If the analysis indicates demonstrable, substantial success, the General Assembly shall consider expanding the number of charter schools that may be established.

(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a contract, (v) make recommendations concerning grievances between a charter school and its chartering entity, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

§ 115C-238.29J. Public and private assistance to charter schools.

(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units and to contract with those charter schools to provide student transportation.

(b) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(c) The State Board of Education shall direct the Department of Public Instruction to provide guidance and technical assistance, upon request, to applicants and potential applicants for charters. (1995 (Reg. Sess., 1996), c. 731, s. 2.)

Part 7. Extended Services Programs.

§ 115C-238.31. Extended services programs.

(a) Local school administrative units are encouraged to implement extended services programs that will expand students' opportunities for educational success through high-quality, integrated access to instructional programming during nonschool hours. Extended services programs may be incorporated into school improvement plans developed in accordance with G.S. 115C-105.27. Calendar alternatives include, but are not limited to, after-school hours, before-school hours, evening school, Saturday school, summer school, and year-round school. Instructional programming may include, but is not limited to, tutoring, direct instruction, enrichment activities, study skills, and reinforcement projects.

(b) Extended services programs shall be targeted primarily toward students who perform significantly below their age-level peers; however, these programs may be established for students who are achieving at or above grade level.

(c) Extended services programs should be accelerated and based on needs assessments of the students in the program. The programs shall build on, and be fully integrated with, existing classroom and school activities.

(d) Extended services programs may be based in schools, collaboratively between schools, or in other community-based locations. (1993, c. 132, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 24.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subsection (a), in the second sentence, substituted "school improvement" for "building-level", and substituted "115C-105.22" [115C-105.27] for "115C-238.3", and deleted the third sentence, which read "To implement extended services programs, local school administrative units may request waivers of State laws, regulations, and policies in accordance with Part 4 of this Article."

Part 8. Intervention/Prevention Grant Program for North Carolina School Children.

§§ 115C-238.40 through 115C-238.47: Repealed by 1994, Ex. Sess., c. 24, s. 25(b), effective June 30, 1996.

SUBCHAPTER V. PERSONNEL.

ARTICLE 18.

Superintendents.

§ 115C-272. Residence, oath of office, and salary of superintendent.

(a) Every superintendent shall reside in the county in which he is employed. The superintendent shall not teach, nor be regularly employed in any other capacity that may limit or interfere with his duties as superintendent. Each superintendent, before entering upon the duties of his office, shall take an oath for the faithful performance thereof. The salary of the superintendent shall be in accordance with a State standard salary schedule, fixed and determined by the State Board of Education as provided by law; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teacher and principal salaries are now published.

(b) Superintendents shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All superintendents employed by any local school administrative unit who are paid from local funds shall be paid promptly as provided by law and as State allotted superintendents are paid. Superintendents paid from State funds shall be paid as follows:

(1) Each local board of education shall establish a set date on which monthly salary payments to superintendents shall be made. This set pay date may differ from the end of the calendar month of service. Superintendents shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees. Included within the 12 months' employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year: Provided, that superintendents may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any superintendent with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the superintendent will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds

being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(3) Each local board of education shall sustain any loss by reason of an overpayment to any superintendent paid from State funds.

(4) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(c) The State Board of Education, in fixing the State standard salary schedule of superintendents as authorized by law, shall provide that superintendents who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1955, c. 1372, art. 6, s. 1; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 946, s. 1; 1983; c. 872, s. 1; 1985, c. 757, s. 145(c); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, s. 4; 1989 (Reg. Sess., 1990), c. 1066, s. 93; 1993, c. 321, s. 73(a); 1995, c. 450, s. 17.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subdivision (b)(1) rewrote the first sentence, and added the second, third and fourth sentences.

§ 115C-274. Removal.

(a) Local boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the State Board of Education has sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, the State Board of Education shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of that board of education to hear the evidence in the case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor: Provided, that such superintendent shall have the right to try his title to office in the courts of the State.

(b) If the superintendent shall fail in the duties enumerated in G.S. 115C-276(g), 115C-276(h), 115C-276(i), or any other duties as may be assigned him, he shall be subject, after notice, to an investigation by the State Board of Education or by his board of education for failure to perform his duties. For persistent failure to perform these duties, the State Board of Education may revoke the superintendent's certificate and the superintendent may be dismissed by his board of education.

(c) The identification by the State Board of Education of more than half the schools in a local school administrative unit as low-performing under G.S. 115C-105.37 is evidence that the superintendent is unable to fulfill the duties of the office, and the State Board may appoint an interim superintendent to carry out the duties of the superintendent under G.S. 115C-105.39, may revoke the superintendent's certificate under this section, may dismiss the superintendent under G.S. 115C-105.39, or may take any combination of these actions. (1955, c. 1372, art. 5, s. 25; art. 6, s. 4; 1981, c. 423, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 6.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted "for cause" following "Removal" in the catchline; in subsection (a), in the second sentence, substituted "State Board of Education has" for "Superintendent of Public Instruction shall have", and substituted "the State Board of Education" for "he", in the third sentence, substituted "that" for "said" preceding "board of education", and substituted "the" for "such" preceding "case"; in subsection (b), in the first sentence, substituted "G.S. 115C-276(g), 115C-276(h), 115C-276(i), or any" for "G.S. 115C-276(g) through (i) or such", and substituted "State Board of Education" for "Superintendent of Public Instruction", and, in the second sentence, substituted "the State Board of Education may revoke the superintendent's certificate and the superintendent" for "his certificate may be revoked by the Superintendent of Public Instruction, or he"; and added subsection (c).

§ 115C-276. Duties of superintendent.

(a) In General. — All acts of local boards of education, not in conflict with State law, shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board.

All the powers, duties and responsibilities imposed by law upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units.

(b) To Serve as Secretary to Board. — Superintendents shall be ex officio secretary to their respective boards of education. As secretary to the board of education, the superintendent shall record all proceedings of the board, issue all notices and orders that may be made by the board, and otherwise be executive officer of the board of education. He shall see that the minutes of the meetings of the board of education are promptly and accurately recorded in the minute book which shall be kept in the office of the board of education and be open at all times to public inspection.

(c) To Monitor Condition of School Plants. — It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediate provisions to remedy any unsafe or unsanitary conditions existing in any school building.

(d) To Attend Professional Meetings. — It shall be the duty of every superintendent to attend professional meetings conducted by the State Superintendent of Public Instruction and such other professional meetings as are necessary to keep him informed on educational matters.

(e) To Report Certain Information to the Superintendent of Public Instruction. — It shall be the duty of every superintendent to furnish as promptly as possible to the State Superintendent when requested by him, information and statistics on any phase of the school work in his administrative unit.

(f) To Administer Oaths When Required. — The superintendent shall have authority to administer oaths to teachers and all other school officials when an oath is required of the same.

(g) To Familiarize Himself with and to Implement State Policies and Rules. — It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel to achieve the best methods of instruction, school organization and school government.

(h) To Hold Necessary Teachers' Meetings. — The superintendent shall hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools of his unit.

(i) To Distribute Certain Supplies and Information. — The superintendent shall distribute to all school personnel all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent and the State Board of Education and give instruction for their proper use.

(j) To Assist the Local Board in Electing School Personnel. — It shall be the duty of the superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the administrative unit.

(k) To Submit Organization Reports and Other Information to the State Board. — Each year the superintendent of each local school administrative unit shall submit to the State Board of Education statistical reports, certified by the chairman of the board of education, showing the organization of the schools in his unit and any additional information the State Board may require. At the end of the second month of school each year, local boards of education, through the superintendent, shall report school organization, employees' duties, class sizes, and teaching loads to the State Board of Education as provided in G.S. 115C-47(10). As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(*l*) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. — The superintendent shall maintain in his office a personnel file for each teacher that contains complaints, commendations, or suggestions for correction or improvement about the teacher and shall participate in the firing and demoting of staff, as provided in G.S. 115C-325.

(m) To Furnish Boundaries of Special Taxing Districts. — It shall be the duty of county superintendents, and of city superintendents where their administrative units are not coterminous with city or township limits, to furnish tax listers at tax listing time the boundaries of each taxing district and city administrative unit in which a special tax will be levied to the end that all property in such district or unit may be properly listed.

(n) To Issue Salary Vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher. The superintendent shall not approve the vouchers for the pay of principals or teachers until the monthly and annual reports required by the local board of education are made.

(o) To Participate in the School Budget and Finances. — The superintendent shall participate in the school budget and finances, as provided in Article 31 of this Chapter.

(p) To Require Teachers and Principals to Make Reports. — The superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent. Any superintendent who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(q) To Assign School Principals. — Subject to local board policy, the superintendent shall have the authority to assign principals to school buildings. When making an assignment, the superintendent shall consider (i) whether a principal has demonstrated the leadership ability to increase student achievement at a school where conditions indicated a significant risk of low student performance; and (ii) how to maintain stability at a school where, during the time the principal has been at a school, there has been significant improvement on end-of-course or end-of-grade tests and other accountability measures developed by the State Board of Education.

(r) To Maintain Student Discipline. — The superintendent shall maintain student discipline in accordance with Article 27 of this Chapter and shall keep data on each student suspended or expelled. This data shall include the race, gender, and age of each student, the duration of suspension for each student, whether an alternative education was considered or provided for each student, and whether a student had multiple suspensions. (1955, c. 1372, art. 5, s. 24; art. 6, ss. 3-6, 10, 15; art. 17, s. 6; art. 18, s. 7; 1959, c. 1294; 1963, c. 688, s. 3; 1965, c. 584, ss. 5, 6, 16; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, ss. 17, 18, 24; 1987 (Reg. Sess., 1988), c. 1025, s. 12; c. 1086, s. 89(c); 1993, c. 169, s. 2; c. 210, s. 4; c. 539, s. 882; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 386, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 25.)

Editor's Note. — Session Laws 1995, c. 386, s. 3, provides for the development of guidelines by the State Board of Education that define acts and conduct considered a clear threat to the safety of students and teachers, and for the Board to report to the General Assembly and the Joint Legislative Education Oversight Committee regarding the implementation of the act.

Effect of Amendments. — The 1995 amendment, effective September 1, 1995, and applicable to acts committed on or after that date, added subsection (r).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "measures developed by the State Board of Education" for "indicators developed by the State Board in accordance with G.S. 115C-238.1" at the end of subsection (q).

ARTICLE 19.

Principals and Supervisors.

§ 115C-285. Salary.

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

(1) Classified principals and State-allotted supervisors shall be employed for a term of 12 calendar months. Each local board of education shall establish a set date on which monthly salary payments to classified principals and State-allotted supervisors shall be made. This set pay date may differ from the end of the calendar month of service. Classified principals and State-allotted supervisors shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. They shall earn annual vacation leave at the same rate provided for State employees. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at the time agreed upon by the employee and his immediate supervisor. They shall be provided by the board the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) Supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any supervisor or principals with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the

local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year, except as provided in subdivision (5) of this section.

(4) Each local board of education shall sustain any loss by reason of an overpayment to any principal or supervisor paid from State funds.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) The State Board of Education, in fixing the State standard salary schedule of principals as authorized by law, shall provide that principals who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(7) All persons employed as principals in the schools and institutions listed in subsection (p) of G.S. 115C-325 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education.

(b) Every local board of education may adopt, as to principals and supervisors not paid out of State funds, a salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) The board of education may withhold the salary of any supervisor or principal who delays or refuses to render such reports as are required by law, but when the reports are delivered in accordance with law, the salary shall be paid forthwith. (1955, c. 1372, art. 5, s. 32; art. 6, s. 13; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, c. 383; c. 437, s. 9; c. 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 4; c. 946, s. 2; 1983, c. 872, s. 2; 1985, c. 757, s. 145(d); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, s. 5; 1989, c. 386, s. 1; 1993, c. 321, s. 73(b); 1995, c. 450, s. 18.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subdivision (a)(1) rewrote the second sentence, and added the third, fourth and fifth sentences.

§ 115C-287.1. (See editor's note) Method of employment of principals, assistant principals, supervisors, and directors.

(a)(1) Beginning July 1, 1995, all persons employed as school administrators shall be employed pursuant to this section.

(2) Notwithstanding G.S. 115C-287.1(a)(1), the following school administrators shall be employed pursuant to G.S. 115C-325:

a. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position with career status in that position; and

b. School administrators who, as of July 1, 1995, are serving in a principal or supervisor position and who are eligible to achieve career status on or before June 30, 1997.

A school administrator shall cease to be employed pursuant to G.S. 115C-325 if the school administrator: (i) voluntarily relinquishes career status or the opportunity to achieve career status through promotion, resignation, or otherwise; or (ii) is dismissed or demoted or whose contract is not renewed pursuant to G.S. 115C-325.

(3) For purposes of this section, school administrator means a:

a. Principal;
b. Assistant principal;
c. Supervisor; or
d. Director,

whose major function includes the direct or indirect supervision of teaching or of any other part of the instructional program.

(4) Nothing in this section shall be construed to confer career status on any assistant principal or director, or to make an assistant principal eligible for career status as an assistant principal or a director eligible for career status as a director.

(b) Local boards of education shall employ school administrators who are ineligible for career status as provided by G.S. 115C-325(c)(3), upon the recommendation of the superintendent. All contracts between the school administrator and the local board of education shall be for two to four years, ending on June 30 of the final 12 months of the contract. The local board of education may, with the written consent of the school administrator, extend, renew, or offer a new school administrator's contract at any time after the first 12 months of the contract so long as the term of the new, renewed, or extended contract does not exceed four years. Rolling annual contract renewals are not allowed. Nothing in this section shall be construed to prohibit the filling of an administrative position on an interim or temporary basis.

(c) The term of employment shall be stated in a written contract that shall be entered into between the local board of education and the school administrator. The school administrator shall not be dismissed or demoted during the term of the contract except for the grounds and by the procedure by which a career teacher may be dismissed or demoted as set forth in G.S. 115C-325.

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision and the reasons for his or her decision no later than May 1 of the final year of the contract. The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or political. No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. Failure to file a timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision. If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may be for any cause that is not arbitrary, capricious, discriminatory, personal, or political. The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

(g) If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325. (1993, c. 210, s. 6; 1993 (Reg. Sess., 1994), c. 677, s. 16(a); 1995, c. 369, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, rewrote this section.

§ 115C-288. Powers and duties of principal.

(a) To Grade and Classify Pupils. — The principal shall have authority to grade and classify pupils except a principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available.

(b) To Make Accurate Reports to the Superintendent and to the Local Board. — The principal shall make all reports to the superintendent. Every principal of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any principal or supervisor who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a Class 1 misdemeanor and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(c) To Improve Instruction and Community Spirit. — The principal shall give suggestions to teachers for the improvement of instruction.

(d) To Conduct Fire Drills and Inspect for Fire Hazards. — It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage areas as well as all classrooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file two copies of a written report once each month during the regular school session with the superintendent of his local school administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the local board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education.

It shall be the duty of the principal to minimize fire hazards pursuant to the provisions of G.S. 115C-525.

(e) To Discipline Students and to Assign Duties to Teachers with Regard to the Discipline, General Well-being, and Medical Care of Students. — The principal shall have authority to exercise discipline over the pupils of the school pursuant to policies adopted by the local board of education as prescribed by G.S. 115C-391(a). The principal shall use reasonable force to discipline students and shall assign duties to teachers with regard to the general well-being and the medical care of students pursuant to the provisions of G.S. 115C-307 and 115C-390. The principal also may suspend or dismiss pupils pursuant to the provisions of G.S. 115C-391.

(f) To Protect School Property. — The principal shall protect school property as provided in G.S. 115C-523.

(g) To Report Certain Acts to Law Enforcement. — When the principal has a reasonable belief that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this subsection, "school property" shall include any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

(h) To Make Available School Budgets and School Improvement Plans. — The principal shall maintain a copy of the school's current budget and school improvement plan, including any amendments to the plan, and shall allow parents of children in the school and other interested persons to review and obtain such documents in accordance with Chapter 132 of the General Statutes. (1955, c. 1372, art. 17, ss. 6, 8; 1957, c. 843; 1959, c. 573, s. 13; c. 1294; 1965, c. 584, s. 15; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 4; 1987, c. 572, s. 3; 1993, c. 327, s. 1; c. 539, s. 883; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 716, s. 7.1; 1996, 2nd Ex. Sess., c. 18, s. 18.27)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 7.1, effective June 21, 1996, added "except a principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available" to the end of subsection (a).

Session Laws 1996, Second Extra Session, c. 18, s. 18.27, effective July 1, 1996, added subsection (h).

ARTICLE 19A.

Standards Board for Public School Administration.

§ 115C-290.2. Definitions.

The following definitions apply in this Article:

(1) Repealed by Session Laws 1995, c. 116, s. 1, effective May 29, 1995.

(2) Exam. — The North Carolina Public School Administrator Exam.

(3) School administrator. — Public school superintendents, deputy superintendents, associate superintendents, assistant superintendents, principals, and assistant principals.

(4) Standards Board. — The North Carolina Standards Board for Public School Administration. (1993, c. 392, s. 1; 1995, c. 116, s. 1.)

Editor's Note. — The subdivision (4) designation in this section was added at the direction of the Revisor of Statutes, the designation in Session Laws 1995, c. 116, s. 1 having been subdivision (1).

Effect of Amendments. — The 1995 amendment, effective May 29, 1995, added "Standards" at the beginning of subdivision (1).

§ 115C-290.3. (Effective January 1, 1998) False representation prohibited.

It is unlawful for a person whom the Standards Board has not recommended for certification as a public school administrator to represent himself or herself as having been recommended by the Standards Board or to hold himself or herself out to the public by any title or description denoting that he or she has been recommended by the Standards Board for certification. A person who violates this section is guilty of a Class 2 misdemeanor. (1993, c. 392, s. 1; 1994, Ex. Sess., c. 14, s. 59; 1995, c. 116, s. 2.)

Editor's Note. — Session Laws 1993, c. 392, s. 5, as amended by Session Laws 1995, c. 116, s. 8, makes this section effective January 1, 1998.

Effect of Amendments. — The 1995 amendment, effective January 1, 1998, deleted "of qualifications" following "representation" in the catchline; and in the first sentence inserted "Standards" preceding the first two occurrences of "Board", substituted "recommended" for "qualified" three times, and substituted "Standards Board for certification" for the last occurrence of "Board".

§ 115C-290.4. North Carolina Standards Board for Public School Administration; appointments; terms; composition.

(a) The North Carolina Standards Board for Public School Administration is created. The Standards Board shall be located for administrative purposes in the State Board of Education. The Standards Board shall exercise its powers independently of the State Board of Education.

(b) The Standards Board shall consist of seven members appointed by the Governor as follows:

(1) Two local superintendents employed by a local school administrative unit.
(2) Three principals employed by a local school administrative unit.
(3) One dean of a school of education or a designee.
(4) One representative of the public at large.

Composition of the Standards Board as to the race and sex of its members shall reflect the composition of the population of the State. Members of the Standards Board shall be residents of the State and shall each reside in a different congressional district.

With the exception of the member representing the public at large, each member must be qualified under this Article, and must be actively engaged in the practice of public school administration or in the education and training of students in public school administration. Before their appointment to the Standards Board, these professional Standards Board members must have been actively engaged in the practice of public school administration or in the education and training of students in public school administration for at least three years, at least two of which occurred primarily in this State.

(c) The Governor may only remove a member of the Standards Board for neglect of duty, malfeasance, or conviction of a felony or other crime of moral turpitude.

(d) Effective July 1, 1993, the Governor shall appoint one superintendent, two principals, and the dean of a school of education for terms of three years, and one superintendent, one principal, and the representative of the public for terms of two years. Thereafter the terms shall be for three years. Each term of service on the Standards Board shall expire on the 30th day of June of the year in which the term expires. No member shall serve more than two consecutive three-year terms. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term.

(e) Members of the Standards Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Article, at the rates prescribed in G.S. 93B-5.

(f) The Standards Board shall elect from its membership a chairperson, a vice-chairperson, and a secretary-treasurer, and adopt rules to govern its proceedings. All members are voting members, and a majority of the membership constitutes a quorum.

(g) The Standards Board may employ, subject to Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Standards Board. (1993, c. 392, s. 1; 1995, c. 116, s. 2.1; c. 324, s. 17.13(b).)

Editor's Note. —

Session Laws 1993, c. 392, s. 5, as amended by Session Laws 1995, c. 116, s. 8, provides, in part, that notwithstanding § 115C-290.4, members appointed to the North Carolina Standards Board for Public School Administration before January 1, 1998, are not required to be qualified under Article 19A of Chapter 115C as enacted by Session Laws 1993, c. 392.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 17.13(a), provides for the transfer of the North Carolina Standards Board for Public

School Administration from the Office of the Governor to the State Board of Education.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 116, s. 2.1, effective May 29, 1995, inserted "Standards" preceding "Board" throughout this section.

Session Laws 1995, c. 324, s. 17.13(b), effective July 1, 1995, in subsection (a) substituted "State Board of Education" for the "Office of the Governor" in the second sentence, and substituted "the State Board of Education" for "that Office" in the last sentence.

§ 115C-290.5. Powers and duties of the Board; development of the North Carolina Public School Administrator Exam.

(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

(1) In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.

(2) Establish and collect an application fee not to exceed fifty dollars ($50.00), and an exam fee not to exceed one hundred fifty dollars ($150.00). Fees collected under this Article shall be credited to the General Fund as nontax revenue.

(3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.

(4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to be certified as public school administrators by the State Board of Education.

(5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.

(7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration.

(b) The Board may adopt a seal and affix it to any documents issued by the Board.

(c) The Standards Board shall submit its proposed exam to the State Board. The State Board shall adopt or reject the proposal. The State Board shall not make any substantive changes to any exam that it adopts. If the State Board rejects the proposal, it shall state with specificity its reasons for rejection; the Standards Board then may prepare another proposed exam and submit it to the State Board. If the State Board rejects the proposed exam on its second submission, the State Board may develop and adopt an exam by December 1, 1997. The General Assembly urges the State Board to utilize the Standards Board's proposed exam to the maximum extent that it is consistent with the State Board's policies if the State Board develops and adopts an exam. After an exam has been adopted, the Standards Board may submit suggested changes to the State Board for its approval. (1993, c. 392, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 11; 1995, c. 116, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 18.21(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective May 29, 1995, inserted "Standards" preceding "Board" twice in the introductory language of subsection (a) and once in subdivision (a)(1); and substituted "recommended" for "qualified" in subdivision (a)(4).

The 1996 Second Extra Session amendment, effective August 3, 1996, added "In accordance with subsection (c) of this section" at the beginning of subdivision (a)(1); and added subsection (c).

§ 115C-290.6. (Effective January 1, 1998) Application to the Standards Board.

An individual who seeks to be recommended by the Standards Board for certification by the State Board of Education, shall file a written application with the Standards Board. The application must be on a form provided by the Standards Board, must be accompanied by the required application and exam fees established by the Standards Board, and must include any information required by the Standards Board. (1993, c. 392, s. 1; 1995, c. 116, s. 4.)

Editor's Note. — Session Laws 1993, c. 392, s. 5, as amended by Session Laws 1995, c. 116, s. 8, makes this section effective January 1, 1998.

Effect of Amendments. — The 1995 amendment, effective January 1, 1998, substituted "to the Standards" for "for qualification by" in the catchline; substituted "recommended" for "qualified" in the first sentence; inserted "Standards" preceding "Board" throughout the section"; and deleted "as a public school administrator, thereby becoming eligible" preceding "for certification by" in the first sentence.

§ 115C-290.7. (Effective January 1, 1998) Recommendation by the Standards Board.

(a) The Standards Board shall recommend for certification by the State Board an individual who submits a complete application to the Standards Board and satisfies all of the following requirements:

(1) Pays the application fee established by the Standards Board.

(2) Pays the exam fee established by the Standards Board.

(3) Has a bachelors degree from an accredited college or accredited university and (i) has a graduate degree from a public school administration program that meets the public school administrator program approval standards set by the State Board of Education, or (ii) has a masters degree from an accredited college or accredited university and has completed by December 31, 1999, a public school administration program that meets the public school administration approval standards set by the State Board of Education.

(4) Passes the exam.

§ 115C-290.7 has a delayed effective date. See notes.

(b) The State Board of Education may not certify an individual as a public school administrator unless it has received notice from the Standards Board that the person is recommended by the Standards Board under this Article. The State Board may designate initial certification as a license; advanced training may be designated as a certified area of practice. (1993, c. 392, s. 1; 1995, c. 116, s. 5; 1996, 2nd Ex. Sess., c. 18, s. 18.21(b).)

Editor's Note. — Session Laws 1993, c. 392, s. 5, as amended by Session Laws 1995, c. 116, s. 8, makes this section effective January 1, 1998.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective January 1, 1998, substituted "Recommendation by the Standards Board" for "Qualification by the Board" in the catchline; inserted "Standards" preceding "Board" throughout the section; substituted "recommend for certification by the State Board" for "qualify" in the introductory language of subsection (a); in subsection (b), in the first sentence substituted "that the person is recommended by the Standards Board" for "of the individual's qualification", and added the last sentence.

The 1996 Second Extra Session amendment, effective January 1, 1998, in subdivision (a)(3) inserted "accredited," inserted "(i)," and added "or (ii) has a masters degree from an accredited college or accredited university and has completed by December 31, 1999, a public school administration program that meets the public school administration approval standards set by the State Board of Education."

§ 115C-290.8. (Effective January 1, 1998) Exemptions from requirements.

The requirements of this Article do not apply to a person who, at any time during the five years preceding January 1, 1998, (i) completed an administrative internship as part of an approved graduate program in school administration and obtained an active State administrator/supervisor certificate, or (ii) was engaged in school administration while in possession of an active State administrator/supervisor certificate. A person who is exempt from the requirements of this Article but applies to the Standards Board under this Article shall be subject to the Article. (1993, c. 392, s. 1; 1995, c. 116, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 18.21(c).)

Editor's Note. — Session Laws 1993, c. 392, s. 5, as amended by Session Laws 1995, c. 116, s. 8, makes this section effective January 1, 1998.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective January 1, 1998, deleted "qualification" preceding "requirements" in the catchline and the first and second sentences; substituted "January 1, 1998" for "January 1, 1997" in the first sentence; and in the second sentence substituted "to the Standards Board" for "for qualification", substituted "shall be" for "it" preceding "subject to", and substituted "the Article" for "it" at the end.

The 1996 Second Extra Session amendment, effective January 1, 1998, rewrote this section.

§ 115C-290.9. (Effective January 1, 1998) Grounds for refusal to recommend a person.

The Standards Board may, in accordance with Chapter 150B of the General Statutes, refuse to recommend a person for certification by the State Board of Education for any of the following reasons:

(1) Submitting a false application or otherwise attempting to obtain a recommendation from the Standards Board by fraud or misrepresentation.

(2) Failure to meet the requirements set in G.S. 115C-290.7.

(3) Violating a provision of this Article or a rule adopted by the Standards Board. (1993, c. 392, s. 1; 1995, c. 116, s. 7.)

Editor's Note. — Session Laws 1993, c. 392, s. 5, as amended by Session Laws 1995, c. 116, s. 8, makes this section effective January 1, 1998.

Effect of Amendments. — The 1995 amendment, effective January 1, 1998, substituted "recommend" for "qualify" the catchline; inserted "Standards" preceding "Board" in the introductory language and subdivision (3); substituted "recommend" for "qualify" in the introductory language; and in subdivision (1) deleted "for qualification" following "application" and substituted "a recommendation from the Standards Board" for "qualification".

Article 20.

Teachers.

§ 115C-295. Minimum age and certificate prerequisites.

Editor's Note. —

Session Laws 1993, c. 321, s. 141, provided for the creation of a Task Force on Teacher Staff Development to develop a Teacher Academy Plan, to establish a statewide network of high quality, integrated, comprehensive, collaborative, and sustained professional development for teachers in school committee leadership and the core content areas. Funds in the amount of $300,000 were appropriated to implement the provisions of section 141. The Task Force was to report the Plan to the Joint Legislative Education Oversight Committee no later than March 1, 1994. Session Laws 1993, c. 321, s. 141 was repealed by Session Laws 1995, c. 324, s. 17.9(b), effective September 1, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Most of Session Laws 1995, c. 324, s. 17.9, effective September 1, 1995, providing for the transfer of the Task Force on Teacher Staff Development, and all funds, resources and personnel provided for the Task Force and the Teacher Academy Program, from the Department of Public Instruction to The University of North Carolina; for the Task Force to be renamed the North Carolina Teacher Academy Board of Trustees; for the delegation of powers and duties by The Board of Governors of The University of North Carolina to the Board of Trustees; for the establishment of summer programs by the Board of Trustees; for the appointment of the members of the Board of Trustees; and for the Board of Trustees to report to the Joint Legislative Education Oversight Committee prior to November 1, 1995, has been codified at § 116-30.01.

§ 115C-295.1. North Carolina Professional Teaching Standards Commission.

(a) There is created the North Carolina Professional Teaching Standards Commission (the "Commission"). The Commission shall be located administratively under the State Board of Education but shall exercise its powers and duties independently of the State Board of Education.

(b) The purpose of the Commission is to establish high standards for North Carolina teachers and the teaching profession.

(c) Beginning September 1, 1996, the Commission shall consist of the following 16 members:

(1) The Governor shall appoint four teachers from a list of names, including the State Teacher of the Year, submitted by the State Board of Education; one principal; one superintendent; and two representatives of schools of education, one of which is in a constituent institution of The University of North Carolina and one of which is in a private college or university.

(2) The President Pro Tempore of the Senate shall appoint three teachers who have different areas of expertise or who teach at different grade levels; and one at-large member.

(3) The Speaker of the House of Representatives shall appoint three teachers who have different areas of expertise or who teach at different grade levels; and one at-large member.

In making appointments, the appointing authorities are encouraged to select qualified citizens who are committed to improving the teaching profession and student achievement and who represent the racial, geographic, and gender diversity of the State. Before their appointment to this Commission, with the exception of the at-large members, the members must have been actively engaged in the profession of teaching, in the education of students in teacher education programs, or in the practice of public school administration for at least three years, at least two of which occurred in this State. The members shall serve for two-year terms. Initial terms shall begin September 1, 1994. Vacancies in the membership shall be filled by the original appointing authority using the same criteria as provided in this subsection.

(d) The Commission shall elect a chair, a vice-chair, and a secretary-treasurer from among its membership. In the absence of the chair, the vice-chair shall preside over the Commission's meetings. All members are voting members, and a majority of the Commission constitutes a quorum. The Commission shall adopt rules to govern its proceedings.

(e) Meetings of the Commission shall be held upon the call of the chair or the vice-chair with the approval of the chair.

(f) Members of the Commission shall receive compensation for their services and reimbursement for expenses incurred in the performance of their duties required by this Article, at the rate prescribed in G.S. 90B-5.

(g) The Commission may employ, subject to Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix compensation within the limits of funds available to the Commission. (1993 (Reg. Sess., 1994), c. 740, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 18.12(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, rewrote this section.

§ 115C-295.2. Powers and duties of the Commission.

(a) The North Carolina Teaching Standards Commission shall:

(1) Develop and recommend to the State Board of Education professional standards or revisions to professional standards for North Carolina teachers.

(2) Review the areas of teacher certification and recommend to the State Board of Education those areas that should be consolidated, redesigned, eliminated, or enhanced.

(3) Consider current methods to assess teachers and teaching candidates, including the National Teacher Exam, the assessments of the National Board for Professional Teaching Standards, and alternative methods of assessment and recommend to the State Board of Education the implementation of rigorous and appropriate assessments for initial and continuing certification that are valid and reliable measures of professional practice.

(4) Evaluate, develop, and recommend to the State Board a procedure for the assessment and recommendation of candidates for initial and continuing teacher certification.

For purposes of this subsection, the areas of teacher certification include initial certification, continuing certification, and certification renewal, and do not include teacher education programs.

(b) The Commission shall submit its recommendations under subsection (a) of this section to the State Board. The State Board shall adopt or reject the recommendations. The State Board shall not make any substantive changes to any recommendation that it adopts. If the State Board rejects the recommendation, it shall state with specificity its reasons for rejection; the Commission then may amend that recommendation and resubmit it to the State Board. The Board shall adopt or reject the amended recommendation. If the State Board fails to adopt the Commission's original and amended recommendation concerning the implementation of assessments for certification and the procedure for the assessment and recommendation of candidates for teacher certification, the State Board may develop and adopt its own plan.

(c) The Commission shall submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee and the State Board of Education of its activities during the preceding year, together with any recommendations and findings regarding improvement of the teaching profession. The State Board shall submit a report by April 15, 1998, to the Joint Legislative Education Oversight Committee on the current status of assessments for certification and any changes to the procedures for assessment and recommendation of candidates for teacher certification. (1996, 2nd Ex. Sess., c. 18, s. 18.12(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 115C-295.3. Professional Practices Board.

The State Board of Education shall establish a Professional Practices Board composed of teachers, school administrators, and representatives of the general public. The Professional Practices Board shall:

(1) Develop a code of ethics for the teaching profession and develop procedures to investigate violations of the code.

(2) Investigate complaints concerning violations of the code of ethics.

(3) Make recommendations to the State Board of Education concerning the revocation and suspension of teacher certificates as the result of an ethics violation.

The Professional Practices Board shall recommend the code of ethics and the investigation procedures that it develops to the State Board of Education for its approval. The State Board of Education is the final authority in all decisions under this section, except as provided in the procedures concerning the due process rights of any person subject to an investigation under this section. The State Board of Education shall adopt rules necessary to implement this section. (1996, 2nd Ex. Sess., c. 18, s. 18.12(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 115C-296. Board sets certification requirements.

(a) The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972: Provided, further, that the State Board of Education shall not decrease the certification standards for physical education teachers or health education teachers below the standards in effect on June 1, 1988.

(b) It is the policy of the State of North Carolina to maintain the highest quality teacher education programs and school administrator programs in order to enhance the competence of professional personnel certified in North Carolina. To the end that teacher preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than November 1, 1994, a plan to promote this policy. The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors, the Board of Community Colleges and such other public and private agencies as are necessary, shall continue to refine the several certification requirements, standards for approval of institutions of teacher education, standards for institution-based innovative and experimental programs, standards for implementing consortium-based teacher education, and standards for improved efficiencies in the administration of the approved programs. The standards for approval of institutions of teacher education shall require that teacher education programs for students who do not major in special education include courses in the identification and education of children with learning disabilities. The State Board of Education shall incorporate the criteria developed in accordance with G.S. 116-74.21 for assessing proposals under the School Administrator Training Program into its school administrator program approval standards.

(c) It is the policy of the State of North Carolina to encourage lateral entry into the profession of teaching by skilled individuals from the private sector. To this end, before the 1985-86 school year begins, the State Board of Education shall develop criteria and procedures to accomplish the employment of such individuals as classroom teachers. Regardless of credentials or competence, no one shall begin teaching above the middle level of differentiation. Skilled individuals who choose to enter the profession of teaching laterally may be granted a provisional teaching certificate for no more than five years and shall be required to obtain certification before contracting for a sixth year of service with any local administrative unit in this State.

It is further the policy of the State of North Carolina to ensure that local boards of education can provide the strongest possible leadership for schools based upon the identified and changing needs of individual schools. To this end, before the 1994-95 school year begins, the State Board of Education shall carefully consider a lateral entry program for school administrators to ensure that local boards of education will have sufficient flexibility to attract able candidates.

(d) The State Board of Education may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37; and

(2) The assistance team assigned to that school under G.S. 115C-105.38 makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1103, s. 6; 1987 (Reg. Sess., 1988), c. 1086, s. 96; 1989, c. 752, s. 66(a); 1993, c. 166, s. 1; c. 199, s. 4; 1995 (Reg. Sess., 1996), c. 716, s. 7.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subsection (d).

CASE NOTES

Speech Pathologists. — State Board of Education does not have the power to credential speech pathologists pursuant to their regulatory authority over the qualifications of school employees; the Licensure Act for Speech and Language Pathologists and Audiologists (§ 90-292) alone governs the qualification of persons practicing speech pathology, no matter what the setting. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996).

§ 115C-302. Salary and vacation.

(a) Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted teachers are paid.

Teachers paid State funds shall be paid as follows:

(1) Academic Teachers. — Regular state-allotted teachers shall be employed for a period of 10 calendar months. Each local board of education shall establish a set date on which monthly salary payments to regular State-allotted teachers shall be made. This set pay date may differ from the end of the calendar month of service. Teachers shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Teachers employed for a period of 10 calendar months in year-round schools shall be paid in 12 equal installments. Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said local school administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar months employment shall be annual vacation leave at the same rate provided for State employees, computed at one twelfth (1/12) of the annual rate for State employees for each calendar month of employment; which shall be provided by each local board of education at a time when students are not scheduled to be in regular attendance. However, vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. Included within the 10 calendar months employment each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Commission for State employees; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, a teacher may elect not to report due to hazardous travel conditions and to take an

annual vacation day or to make up the day at a time agreed upon by the employee and the employee's immediate supervisor or principal. Within policy adopted by the State Board of Education, each local board of education shall develop rules designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of state-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. If one or more scheduled teacher workdays are displaced due to hazardous weather conditions, a local board may select dates, including dates beyond the 10 calendar months during which teachers and their supervisors may agree to make up the displaced days provided the workdays fall within the fiscal year. Local boards may approve school improvement plans that include teacher workdays outside the 10 calendar months provided the workdays fall within the fiscal year. A teacher and the teacher's supervisor may agree to schedule workdays outside the 10 calendar months provided the workdays fall within the fiscal year. Teachers may be paid on the tenth calendar month pay date for workdays scheduled to occur after the tenth calendar month but before the end of the fiscal year. A teacher who resigns, is dismissed, or whose contract is not renewed and who fails to make up previously agreed upon workdays scheduled after the 10 calendar months shall repay to the local board any salary payments owed due to the failure to make up the workdays. A teacher who continues to be employed by a local board but fails to make up previously agreed upon workdays scheduled after the 10 calendar months may be subject to dismissal under G.S. 115C-325. Local boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule.

(2) Vocational and Technical Education Teachers. — State-allotted months of employment to local boards of education as provided by the State Board of Education shall be used for the employment of teachers of vocational and technical education for a term of employment as determined by the local boards of education. Each local board of education shall establish a set date on which monthly salary payments to these vocational and technical education teachers shall be made. This set pay date may differ from the end of the calendar month of service. These teachers shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Local boards shall not reduce the term of employment for any vocational agriculture teacher personnel position that was 12 calendar months for the 1982-83 school year for any school year thereafter. Teachers employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal installments. Any individual teacher employed for a term of 10 calendar months who is not employed in a

year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total workdays for a 10-month employee exceed 200 days in a 10-month schedule and the workweek shall constitute five days for all vocational and technical teachers regardless of the employment period.

Vocational and technical education teachers who are employed for 11 or 12 months may, with prior approval of the principal, work on annual leave days designated in the school calendar and take those annual leave days during the 11th or 12th month of employment.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational and Technical Education.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual vacation leave earned by a teacher during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Teachers may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any teachers with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the teacher will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being

appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(3a) Teachers employed on a 10- or 11-month basis at year-round schools shall be employed for the same total number of days as teachers employed for a period of 10 or 11 calendar months, respectively, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity, for teachers who are employed on a 10- or 11-month basis at year-round schools, shall be equivalent to those of teachers employed for 10 or 11 calendar months, respectively.

(4) Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provide that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(b) Repealed by Session Laws 1985, c. 791, s. 5(c).

(c) Every local board of education may adopt, as to teachers not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

Whenever a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, that a board of education may authorize the superintendent to supplement the salaries of all teachers from local funds, and the minutes of the board shall show what increase is allowed each teacher.

(d) Longevity pay for 10-month employees is based on their annual salary and the longevity percentage may not be reduced by prorating the longevity pay for 10-month employees over a 12-month period.

(e) It is the policy of the State of North Carolina to enhance the teaching profession by providing teachers with career opportunities that do not remove them from the classroom; to encourage the development and implementation of a professional salary schedule that complements the system of differentiation; to have salaries of professional educators in elementary and secondary schools based upon performance, degree attained, differentiation and the needs of the local school administrative unit; and to begin, in the school year beginning in 1986, a differential salary system based upon performance, differentiation, local availability of classroom teachers, geographical location of the employing local school administrative unit and such other factors as the local board of education shall deem necessary.

Performance shall be measured by evaluations which are administered pursuant to G.S. 115C-326. Differentiation shall be based upon superior performance over a period of time plus other responsibilities. Needs of the local school administrative unit over and above the standard course of study shall be defined by the local board of education exclusively funded from revenues provided at the discretion of the board of county commissioners or from other local funds under the control of the local board of education.

Each salary may include a local variable component, determined locally and based upon the needs and condition of the local school administrative unit. This local variable component shall be paid from local revenue.

(f) A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the the teacher and local board of education agree otherwise. (1955, c. 1372, art. 5, s. 32; art. 17, s. 9; art. 18, ss. 6, 7; 1961, c. 1085; 1965, c. 584, ss. 3, 16; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 1; c. 947, s. 1; 1983, c. 761, s. 90; c. 768, s. 9; c. 872, ss. 3, 4; 1983 (Reg. Sess., 1984), c. 1103, s. 8; 1985, c. 757, s. 145(e), (f); c. 791, s. 5(c); 1985 (Reg. Sess., 1986), c. 975, ss. 6, 15, 24; 1987, c. 414, ss. 6, 7; c. 595; 1989, c. 386, s. 2; 1991, c. 689, s. 39.3(a); 1993, c. 98, s. 1; c. 180, s. 4; c. 321, s. 73(c); c. 475, s. 1; 1995, c. 450, ss. 19, 20; c. 507, s. 17.13; 1995 (Reg. Sess., 1996), c. 716, ss. 10, 26; 1996, 2nd Ex. Sess., c. 18, s. 18.13A.)

Local Modification. — By virtue of Session Laws 1996, Second Extra Session, c. 18, s. 26, Henderson: 1991 (Reg. Sess., 1992), c. 995 (eff. July 1, 1993); New Hanover: 1993, c. 561, s. 53; Orange: 1991, c. 246, s. 8; Brunswick County Board of Education: 1993, c. 321, s. 144; Caldwell County Board of Education: 1993 (Reg. Sess., 1994), c. 769, s. 19.22; 1995, c. 12, s. 1; Charlotte-Mecklenburg County School Administrative Unit: 1991 (Reg. Sess., 1992), c. 770; Dare County Board of Education: 1993 (Reg. Sess., 1994), c. 769, s. 19.18; Haywood County Board of Education: 1989, c. 399, s. 1; 1989 (Reg. Sess., 1990), c. 820; Kings Mountain School Administrative Unit: 1991, c. 106, s. 2; Pitt Board of Education: 1991 (Reg. Sess., 1992), c. 835; Scotland County Board of Education: 1993, c. 321, ss. 143.1, 321; 1993 (Reg. Sess., 1994), c. 769, s. 19.19; and Watauga County Board of Education: 1993 (Reg. Sess., 1994), c. 769, s. 19.21 should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations

Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 18.8, provides: "The State Board of Education may establish a pilot program to grant no more than four local boards of education additional flexibility in setting the pay dates for their 10-month employees. Notwithstanding the provisions of G.S. 115C-302(a) and 115C-316(a), local school administrative units participating in the pilot may pay 10-month employees for a full month of employment when days employed are less than a full month at the beginning or the end of the teachers' contract. No local school administrative unit shall be required to participate in the pilot. A local board participating in the pilot shall bear all of the cost of recouping funds prepaid for work never done and the cost of these funds cannot be recouped.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the pilot program prior to September 1, 1998."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 450, ss. 19 and 20, effective July 1, 1995, in subdivision (a)(1) deleted the former second sentence regarding the date and number of installments for salary payments to be made to regular state-allotted teachers, added the present second through fifth sentences, deleted "Provided further, that" from the beginning of the seventh sentence, and deleted "and regulations" following "develop rules" in the next to last sentence; and in subdivision (a)(2) deleted the former second sentence regarding the date of payment, term of employment and number of installments for salary payments to vocational and technical education teachers, and added the present second through eighth sentences.

Session Laws 1995, c. 507, s. 17.13, effective July 1, 1995, added subsection (f).

Session Laws 1995 (Reg. Sess., 1996), c. 716, ss. 10 and 26, effective June 21, 1996, inserted the six sentences preceding the last sentence in subdivision (a)(1); and substituted "evaluations which are administered pursuant to G.S. 115C-326" for "standardized evaluations which are routinely administered pursuant to G.S. 115C-326 by competent and trained administrators who have themselves demonstrated meritorious performance in the classroom" in the first sentence of the second paragraph of subsection (e).

Session Laws 1996, Second Extra Session, c. 18, s. 18.13A, effective July 1, 1996, deleted the second paragraph of subsection (f), which read "The total of all such leave time shall be no more than 12 weeks."

§ 115C-303. Withholding of salary.

Editor's Note. —

Session Laws 1995, c. 450, s. 24, provides for the rate of pay of substitute teachers, and provides: "Deductions in salaries for teachers on leave who require a deduction in salary for substitute pay shall be at a standard rate of fifty dollars ($50.00) per day."

ARTICLE 21.

Other Employees.

§ 115C-315. Hiring of school personnel.

CASE NOTES

Speech Pathologists. — State Board of Education does not have the power to credential speech pathologists pursuant to their regulatory authority over the qualifications of school employees; the Licensure Act for Speech and Language

Pathologists and Audiologists (§ 90-292) alone governs the qualification of persons practicing speech pathology, no matter what the setting. North Carolina Bd. of Exmrs. for Speech & Language Pathologists & Audiologists v. North Carolina State Bd. of Educ., 122 N.C. App. 15, 468 S.E.2d 826 (1996).

§ 115C-316. Salary and vacation.

(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

(1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. — Each local board of education shall establish a set date on which monthly salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis, shall be made. This set pay date may differ from the end of the calendar month of service. These employees shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) School Employees Paid on an Hourly or Other Basis. — Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2), and 115C-316(a)(1) shall be made at a time determined by each local board of education. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that school employees employed for a term of 10 calendar months in year-round schools shall be paid in 12 equal installments: Provided further, that any individual school employee employed for a term of 10 calendar months who is not employed in a year-round school may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit

which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment as those designated by the State Personnel Commission for State employees.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten- or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by these employees shall be upon the authorization of their immediate supervisor and under policies established by the local board of education. Vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an

hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation converted to sick leave so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4a) Employees employed on a 10- or 11-month basis at year-round schools shall be employed for the same total number of days as employees employed for a period of 10 or 11 calendar months, respectively, but those days may be scheduled over 12 calendar months. Annual leave, sick leave, workdays, holidays, salary, and longevity, for employees who are employed on a 10- or 11-month basis at year-round schools, shall be equivalent to those of employees employed for 10 or 11 calendar months, respectively.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(b) Every local board of education may adopt, as to school officials other than superintendents, principals and supervisors not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) Longevity pay for 10-month employees is based on their annual salary and the longevity percentage may not be reduced by prorating the longevity pay for 10-month employees over a 12-month period. (1955, c. 1372, art. 5, s. 32; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, ss. 2, 3;

c. 730, s. 1; c. 946, s. 3; c. 947, s. 2; 1983, c. 872, ss. 5-7; 1985, c. 757, s. 145(g), (h); 1985 (Reg. Sess., 1986), c. 975, s. 15; 1987, c. 414, ss. 8, 9; 1989, c. 386, s. 3; 1989 (Reg. Sess., 1990), c. 1066, s. 94; 1991, c. 689, s. 39.3(b); 1993, c. 98, s. 2; c. 321, s. 73(d), (e); c. 475, s. 2; 1995, c. 450, s. 21.)

Local Modification. — By virtue of Session Laws 1996, Second Extra Session, c. 18, s. 18.26, Henderson: 1991 (Reg. Sess., 1992), c. 995 (eff. July 1, 1993); New Hanover: 1993, c. 561, s. 53; Orange: 1991, c. 246, s. 8; Brunswick County Board of Education: 1993, c. 321, s. 144; Caldwell County Board of Education: 1993 (Reg. Sess., 1994), c. 796, s. 19.22; 1995, c. 12, s. 1; Charlotte-Mecklenburg County School Administrative Unit: 1991 (Reg. Sess., 1992), c. 770; Dare County Board of Education: 1993 (Reg. Sess., 1994), c. 769, s. 19.18; Haywood County Board of Education: 1989, c. 399, s. 1; 1989 (Reg. Sess., 1990), c. 820; Kings Mountain School Administrative Unit: 1991, c. 106, s. 2; Pitt Board of Education: 1991 (Reg. Sess., 1992), c. 835; Scotland Board of Education: 1993, c. 321, s. 143.1; 1993 (Reg. Sess., 1994), c. 769, s. 19.19; and Watauga County Board of Education: 1993 (Reg. Sess., 1994), c. 769, s. 19.21 should be stricken from the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 18.6, provides: "Notwithstanding any other provision of law, all school bus drivers, who have been employed for at least one academic year and who are not entitled to more than one day of paid vacation leave, are entitled to one day of paid vacation leave in each subsequent school year."

Session Laws 1996, Second Extra Session, c. 18, s. 18.8, provides: "The State Board of Education may establish a pilot program to grant no more than four local boards of education additional flexibility in setting the pay dates for their 10-month employees. Notwithstanding the provisions of G.S. 115C-302(a) and 115C-316(a), local school administrative units participating in the pilot may pay 10-month employees for a full month of employment when days employed are less than a full month at the beginning or the end of the teachers' contract. No local school administrative unit shall be required to participate in the pilot. A local board participating in the pilot shall bear all of the cost of recouping funds prepaid for work never done and the cost of these funds cannot be recouped.

"The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the pilot program prior to September 1, 1998."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subdivision (a)(1) rewrote the first sentence, and added the second, third and fourth sentences.

§ 115C-318. Liability insurance for nonteaching public school personnel.

The State Board of Education shall provide funds for liability insurance for nonteaching public school personnel to the extent that such personnel's salaries are funded by the State. The insurance shall cover claims made for injury liability and property damage liability on account of an act done or an omission made in the course of the employee's duties. As provided by law or the rules and policies of the State Board of Education or the local school administrative unit, the State Board of Education shall comply with the State's laws in securing the insurance and shall provide it at the earliest possible date for the 1982-83 school year. Nothing in this section shall prevent the State Board from furnishing the same liability insurance protection for nonteaching public school personnel not supported by State funds, provided that the cost of the protection shall be funded from the same source that supports the salaries of these employees. (1981 (Reg. Sess., 1982), c. 1399, s. 3; 1993, c. 522, s. 4; 1995, c. 450, s. 22.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added "funds" in the first sentence, and deleted the former fourth sentence regarding allocation of funds from the State's Contingency and Emergency Fund.

ARTICLE 22.

General Regulations.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(2) "Committee" means the Professional Review Committee created under G.S. 115C-325(g).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the compensation of a person who is classified or paid by the State Board of Education as a classroom teacher, or to transfer him to a new position carrying a lower salary, or to suspend him without pay to a maximum of 60 days; provided, however, that a suspension without pay pursuant to the provisions of G.S. 115C-325(f) shall not be considered a demotion. The word "demote" does not include a reduction in compensation that results from the elimination of a special duty, such as the duty of an athletic coach, assistant principal, or a choral director.

(5) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(6) "Teacher" means a person who holds at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(b) Personnel Files. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher's professional conduct, except that the superintendent may elect not to place in a teacher's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file. Any teacher may petition the local board of education to remove any information from his personnel file that he deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.

(c)(1) Election of a Teacher to Career Status. — Except as otherwise provided in subdivision (3) of this subsection, when a teacher will have been employed by a North Carolina public school system for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment. If a majority of the board votes to reemploy the teacher, and if it has notified him of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate his employment. If a majority of the board votes against reemploying the teacher, he shall not teach beyond the current school term. If the board fails to vote on granting career status but reemploys him for the next year, he automatically becomes a career teacher on the first day of the fourth year of employment.

A year, for purposes of computing time as a probationary teacher, shall be not less than 120 workdays performed as a full-time, permanent teacher in a normal school year.

(2) Employment of a Career Teacher. — A teacher who has obtained career status in any North Carolina public school system need not serve another probationary period of more than two years, and may, at the option of the board, be employed immediately as a career teacher. In any event, if the teacher is reemployed for a third consecutive school year, he shall automatically become a career teacher. A teacher with career status who resigns and within five years is reemployed by the same local school administrative unit need not serve another probationary period of more than one school year and may, at the option of the board, be reemployed as a career teacher. In any event, if he is reemployed for a second consecutive school year, he shall automatically become a career teacher.

(3) Ineligible for Career Status. — No employee of a local board of education except a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(6). No person who is working in a principal or supervisor position who did not acquire career status as a school administrator by June 30, 1997, shall have career status as an administrator. Further, no director or assistant principal is eligible to obtain career status as a school administrator unless he or she has already been conferred that status by the local board of education.

(4) Leave of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.

(d) Career Teachers.

(1) A career teacher shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

(2)a. The provisions of this subdivision do not apply to a person who is ineligible for career status as provided by G.S. 115C-325(c)(3).

b. Whether or not he has previously attained career status as a teacher, a person who has performed the duties of a principal in the school system for three consecutive years or has performed the duties of a supervisor in the school system for three consecutive years shall not be transferred from that position to a lower paying administrative position or to a lower paying non-administrative position without his consent except for the reasons given in G.S. 115C-325(e)(1) and in accordance with the provisions for the dismissal of a career teacher set out in this section. Transfer of a principal or a supervisor is not a transfer to a lower paying position if the principal's or supervisor's salary is maintained at the previous salary amount.

When a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal.

A year, for purposes of computing time as a probationary principal or supervisor, shall not be less than 145 workdays performed as a full-time, permanent principal or supervisor in a contract year.

A principal or supervisor who has obtained career status in that position in any North Carolina public school system may be required by the board of education in another school system to serve an additional three-year probationary period in that position before being eligible for career status. However, he may, at the option of the board of education, be granted career status immediately or after serving a probationary period of one or two additional years. A principal or supervisor with career status who resigns and within five years is reemployed by the same school system need not serve another probationary period in that position of more than two years and may, at the option of the board, be reemployed immediately as a career principal or supervisor or be given career status after only one year. In any event, if he is reemployed for a third consecutive year, he shall automatically become a career principal or supervisor.

(e) Grounds for Dismissal or Demotion of a Career Teacher.

(1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

a. Inadequate performance.
b. Immorality.
c. Insubordination.
d. Neglect of duty.
e. Physical or mental incapacity.
f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
g. Conviction of a felony or a crime involving moral turpitude.
h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State.
j. Failure to comply with such reasonable requirements as the board may prescribe.
k. Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate.
l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
m. Failure to maintain his certificate in a current status.
n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Before recommending to a board the dismissal or demotion of the career teacher pursuant to G.S. 115C-325(e)(1)*l*., the superintendent shall give written notice to the career teacher by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for a hearing before the board within 10 days. If the teacher requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)*l*.

When a career teacher is dismissed pursuant to G.S. 115C-325(e)(1)*l*. above, his name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.

(4) Dismissal under subdivision (1) above, except paragraph g thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a teacher's sexual misconduct toward or sexual harassment of students or staff.

(f) Suspension without Pay. — If a superintendent believes that cause exists for dismissing a probationary or career teacher for any reason specified in G.S. 115C-325(e)(1)a. through 115C-325(e)(1)j. and that immediate suspension of the teacher is necessary, the superintendent may suspend him without pay. Before suspending a teacher without pay, the superintendent shall meet with the teacher and give him written notice of the charges against him, an explanation of the bases for the charges, and an opportunity to respond. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal as provided in this section. If it is finally determined that no grounds for dismissal exist, the teacher shall be reinstated immediately and shall be paid for the period of suspension.

A teacher recommended for suspension without pay pursuant to G.S. 115C-325(a)(4) may request a hearing before the board. If the teacher requests a hearing before the board, the procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within 15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a suspension without pay pursuant to G.S. 115C-325(a)(4).

(f1) Suspension with Pay. — If a superintendent believes that cause may exist for dismissing or demoting a probationary or career teacher for any reasons specified in G.S. 115C-325(e)(1)b through 115C-325(e)(1)j, but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from his duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall immediately notify the board of education of his action. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to his duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at his request.

(g) Professional Review Committee; Qualifications; Terms; Vacancy; Training.

(1) There is hereby created a Professional Review Committee which shall consist of 132 citizens, 11 from each of the State's congressional districts, five of whom shall be lay persons and six of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years. The initial terms of office of the persons appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1995. The Superintendent of Public Instruction, with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Commit-

tee. The person appointed to fill the vacancy shall serve for the unexpired portion of the term of the member of the Committee whom he is appointed to replace.

(2) The Superintendent of Public Instruction shall provide for the Committee such training as he considers necessary or desirable for the purpose of enabling the members of the Committee to perform the functions required of them.

(3) The compensation of committee members while serving as a member of a hearing panel shall be as for State boards and commissions pursuant to G.S. 138-5. The compensation shall be paid by the State Board of Education.

(h) Procedure for Dismissal or Demotion of Career Teacher.

(1) A career teacher may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

(2) Before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail or personal delivery of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the Committee. A copy of G.S. 115C-325 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher. If the teacher does not request a panel hearing within the 15 days provided; the superintendent may submit his recommendation to the board.

(3) Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for either (i) a review of the superintendent's proposed recommendation by a panel of the Professional Review Committee or (ii) a hearing before the board within 10 days. If the teacher requests an immediate hearing before the board, he forfeits his right to a hearing by a panel of the Professional Review Committee. A hearing conducted by the board pursuant to this subdivision shall be conducted pursuant to G.S. 115C-325(j) and (*l*). If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a panel of the Committee is filed with the superintendent.

(4) If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within seven days from the time of receipt of such notice, shall designate a panel of five members of the Committee, at least two of whom shall be lay persons, who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in

its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.

(i) Hearing by Panel of Professional Review Committee; Report; Action of Superintendent; Review by Board.

(1) The career teacher and superintendent will each have the right to designate not more than 33 of the 132 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify to the superintendent those Committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subdivision (h)(4) above shall contain a list of those members of the Committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right.

(2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct a hearing in accordance with G.S. 115C- 325(j) for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its hearing and shall be empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.

(3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.

(4) When the panel has completed its hearing, it shall prepare a written report and send it to the superintendent and teacher. The report shall contain its findings as to whether or not the grounds for the recommendation are true and substantiated by a preponderance of the evidence, and a statement of the reasons for its findings. The panel shall complete its hearing and prepare the report within 20 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher: Provided, that such extension does not exceed 10 days.

(5) Within five days after the superintendent receives the report of the panel, the superintendent shall decide whether or not to submit a written recommendation for dismissal to the board or to drop the charges against the teacher and shall notify the teacher, in writing, of the decision. Within five days after receiving the superinten-

dent's notice of his intent to recommend the teacher's dismissal to the board, the teacher shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the teacher requests a hearing before the board, the superintendent shall submit his written recommendation to the board with a copy to the teacher within five days after receiving the teacher's request. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the Committee.

(6) Within seven days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and notify the teacher by certified mail of the date, time and place of the hearing. The time specified shall not be less than seven nor more than 20 days after the board has notified the teacher. If the teacher did not request a hearing, the board may, by resolution, dismiss the teacher. If the teacher can show that his request for a hearing was postmarked within the time provided, his right to a hearing is not forfeited.

(j) Hearing Procedure. — The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115C-325(k) or (*l*) or to any hearing conducted by a board pursuant to G.S. 115C-325(h)(3).

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115C-325, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.

(3) At the hearing the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.

(4) Rules of evidence shall not apply to a hearing conducted pursuant to this act and boards and panels of the Professional Review Committee may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least five days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. At least three days before the hearing, the teacher shall provide to the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the board or panel.

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated.

(1) If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher or the superintendent may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.

(2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal.

(*l*) Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated.

(1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.

(2) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the local school administrative unit and the career teacher or his counsel shall have the right to cross-examine witnesses.

(3) At the request of either the superintendent or the teacher, the board shall issue subpoenas requiring the production of papers or records or the attendance of persons residing within the State before the board. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The board shall pay witness fees for up to five witnesses subpoenaed on behalf of the teacher, except that it shall not pay for any witness who resides within the county in which the dismissal originates or who is an employee of the board. However, no employee of the board shall suffer any loss of compensation because he has been subpoenaed to testify at the hearing. These payments shall be as provided for witnesses in G.S. 7A-314.

(4) At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise. The board's decision shall be based on a preponderance of the evidence.

(5) Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and

superintendent. The board shall provide for making a transcript of its hearing. If the teacher contemplates an appeal to a court of law, he may request and shall receive at no charge a transcript of the proceedings.

(m) Probationary Teacher.

(1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h) to (*l*) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) **(See note)** Appeal. — Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (*l*) of this section, or who has been suspended without pay pursuant to G.S. 115C-325(a)(4), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the teacher or school administrator is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board. A teacher who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

(o) Resignation; Nonrenewal of Contract. — A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 1.

(p) Section Applicable to Certain Institutions. — Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Human Resources and Correction regardless of the age of the students.

(q) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Schools.

(1) Notwithstanding any other provision of this section or any other law, the State Board:

a. Shall suspend with pay a principal who has been assigned to a school for more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter; and

b. May suspend with pay a principal who has been assigned to a school for no more than two years before the

State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter.

These principals shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed. The panel shall order the dismissal of the principal, at which time the period of suspension with pay shall expire, unless the panel makes a public determination that the principal has established that the factors that led to the identification of the school as low-performing were not due to the inadequate performance of the principal. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subsection. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and

b. That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career teacher.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(3) The State Board of Education or a local board may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent a

local board from refusing to renew the contract of any person employed in a school identified as low-performing under G.S. 115C-105.37.

(4) Neither party to a school administrator contract is entitled to damages under this subsection.

(5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109; 1991 (Reg. Sess., 1992), c. 942, s. 1; c. 1038, s. 14; 1993, c. 169, s. 1; c. 210, ss. 1-3; 1993 (Reg. Sess., 1994), c. 677, ss. 10, 16(a); 1995, c. 369, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 8.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, rewrote subdivision (c)(3).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subsection (q).

CASE NOTES

I. In General.
V. Grounds for Dismissal or Demotion.

I. IN GENERAL.

Coaches Distinguished from Career Teachers. — Subdivision (a)(4) distinguishes between teaching and coaching because the statute classifies coaching as a "special duty" in addition to regular teaching duties; coaching is not protected by the tenure provisions of subsection (d), which apply to career teachers and protect them from dismissal, demotion, or employment on a part time basis. Babb v. Harnett County Bd. of Educ., 118 N.C. App. 291, 454 S.E.2d 833, cert. denied, appeal dismissed, 340 N.C. 358, 458 S.E.2d 184 (1995).

V. GROUNDS FOR DISMISSAL OR DEMOTION.

Teacher suspended without pay need not have requested reinstatement to his position when the ninety-day time period elapsed; this reinstatement was automatic. Davis v. Public Schs., 115 N.C. App. 98, 443 S.E.2d 781, cert. denied, 337 N.C. 690, 448 S.E.2d 519 (1994).

§ 115C-326. Performance standards and criteria for professional employees; law suits arising out of this section.

(a) The State Board of Education, in consultation with local boards of education, shall develop uniform performance standards and criteria to be used in evaluating professional public school employees. It shall develop rules to recommend the use of these standards and criteria in the employee evaluation process. The performance standards and criteria may be modified in the discretion of the Board.

Local boards of education shall adopt rules to provide for the evaluation of all professional employees defined as teachers in G.S. 115C-325(a)(6). All teachers shall be evaluated annually unless a local board adopts rules that allow specified categories of teachers with career status to be evaluated less frequently. Local boards may also adopt rules requiring the annual evaluation of other school employees not specifically covered in this section. Local boards may develop and use alternative evaluation approaches for teachers provided the evaluations are properly validated. Local boards that do not develop alternative evaluations shall utilize the performance standards and criteria adopted by the State Board of Education, but are not limited to those standards and criteria.

(b) If any claim is made or any legal action is instituted against an employee of a local school administrative unit on account of an act done or an omission made in the course of the employee's duties in evaluating employees pursuant to this section, the local board of education, if the employee is held not liable, shall reimburse the employee for reasonable attorney's fees.

(c) Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 16, effective June 21, 1996. (1979, 2nd Sess., c. 1137, s. 35; 1981, c. 423, s. 1; c. 859, s. 29.12; 1981 (Reg. Sess., 1982), c. 1282, s. 32.1; 1983 (Reg. Sess., 1984), c. 1103, s. 10; 1995 (Reg. Sess., 1996), c. 716, s. 16.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, deleted "and regulations" following "rules" in the second sentence of the first paragraph of subsection (a); deleted "shall be adopted by the Board by July 1, 1982, and" following "standards and criteria" in the third sentence of the first paragraph of subsection (a); rewrote the second paragraph of subsection (a); and deleted subsection (c), which read "The State Board of Education shall recommend to the General Assembly by December 1, 1986, a program to remedy deficiencies and difficulties revealed through the evaluation process required by this section and to develop new skills on the part of classroom teachers."

Part 5. Employment of Handicapped.

§ 115C-331: Reserved for future codification purposes.

Part 6. Criminal History Checks.

§ 115C-332. School personnel criminal history checks.

(a) As used in this section:

(1) "Criminal history" means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings;

Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "School personnel" means any:

a. Employee of a local board of education whether full-time or part-time, or

b. Independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students. School personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit of for which a local board of education requires a criminal history check. The local board of education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the local board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

(d) The local board of education shall review the criminal history it receives on a person. The local board shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The local board of education shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of Education. The local board of education or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes. (1995, c. 373, s. 1.)

Editor's Note. — Session Laws 1995, c. 373, s. 4, made this Part effective July 1, 1995.

Session Laws 1995, c. 373, s. 3, provides: "The State Board of Education, in consultation with the Division of Criminal Information of the Department of Justice, shall adopt rules to implement this act."

§§ 115C-333 through 115C-335: Reserved for future codification purposes.

ARTICLE 23.

Employment Benefits.

§ 115C-336. Sick leave.

(a) All public school employees shall be permitted a minimum of five days per school term of sick leave, pursuant to rules and regulations promulgated by the State Board of Education as provided in G.S. 115C-12(8).

(b) The State Board of Education shall adopt rules and regulations for the establishment of voluntary sick leave banks by local boards of education, from which an employee, upon exhaustion of accumulated sick leave and annual leave, when allowable, may withdraw sick leave days in the event of emergency or catastrophic illness. These rules may include, but not be limited to, (i) requirements of minimum service and minimum balance of sick leave before an employee may join the sick leave bank, (ii) enrollment periods for present employees and new hires, (iii) time limits for rejoining the sick leave bank, (iv) limitation on number of days which can be withdrawn by any employee, (v) waiting period before being eligible to withdraw sick leave, (vi) exclusion of illness or injury covered by Workers' Compensation Benefits, (vii) certification by physician attesting to member's illness or accident, (viii) administration of each sick leave bank by a Sick Leave Bank Committee to be made up of representatives of different classifications of employees, and (ix) other requirements to prevent any adverse selection by employees. The rules concerning the establishment of sick leave banks shall include provisions for notifying employees who donate sick leave to and employees who withdraw sick leave from the sick leave bank, of the State retirement credit consequences as to the donated sick leave.

(c) The State Board of Education shall also adopt rules and regulations to authorize an employee who requires a substitute to use annual leave on days that students are in attendance if the employee has exhausted all of the employee's sick leave and if the employee's absence is due to the catastrophic illness of the employee. The employee shall not be required to pay the substitute. (1981, c. 423, s. 1; 1993, c. 321, s. 72(a); 1995, c. 324, s. 17.4.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 17.1, provides: "State funds for substitute teachers shall be used to pay for substitute teachers on days that teachers use sick leave from voluntary sick leave banks established in accordance with G.S. 115C-336(b)."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (c).

§ 115C-337. Workers' compensation for school employees.

(a) Workers' Compensation Act Applicable to School Employees. — The provisions of the Workers' Compensation Act shall be applicable to all school employees, and the State Board of Education shall make arrangements necessary to carry out the provisions of the Workers' Compensation Act applicable to these employees paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the state-operated school term. The State shall be liable for this compensation on the basis of the average weekly wage of the employees as defined in the Workers' Compensation Act, to the extent of the proportionate part of each employee's salary that is paid from State funds. The State shall also be liable for workers' compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of these employees, to the extent of the proportionate part of each employee's salary that is paid from State funds. The local school administrative units shall be liable for workers' compensation for school employees, including lunchroom employees, whose salaries or wages are paid by the local units from local or special funds. The local units may provide insurance to cover this compensation liability and to include the cost of this insurance in their annual budgets.

The provisions of this subsection shall not apply to any person, firm, or corporation making voluntary contributions to schools for any purpose, and the person, firm, or corporation shall not be liable for the payment of any sum of money under this Chapter.

(b) Payment of Awards to School Bus Drivers Pursuant to the Workers' Compensation Act. — In the event that the Industrial Commission shall make an award pursuant to the Workers' Compensation Act against any local board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the local board of education shall draw a requisition upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the school term. It shall be the duty of the local board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any school bus driver or any other person for the payment of any claim, award, or judgment under the provisions of the Workers' Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the local board of education, the local school administrative unit, nor the tax levying authorities for the local school administrative unit shall be liable for the payment of any award made pursuant to the provisions of this subsection in excess of the amount paid upon such requisition by the State Board of Education, nor shall the local school board of education, the local school administrative unit, nor the said tax levying authorities be required to provide or carry workers' compensation insurance for such purpose. (1955, c. 1292; c. 1372, art. 18, s. 9; 1979, c. 714, s. 2; 1981, c. 423, s. 1; 1995, c. 324, s. 17(b).)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in subsection (a) substituted "to the extent of the proportionate part of each employee's salary that is paid from State funds" for "whether all of said compensation for the school term is paid from State funds or in part supplemented by local funds" in the second sentence, added "to the extent of the proportionate part of each employee's salary that is paid from State funds" in the third sentence, substituted "may" for "are authorized and empowered to" in the last sentence of the first paragraph, and made punctuation and stylistic changes.

Article 24C.

Teacher Enhancement Program.

Part 2. North Carolina Teaching Fellows Commission.

§ 115C-363.23. Membership.

(a) The Commission shall consist of 11 nonlegislative members as follows:

(1) The Chairman of the State Board of Education, or his designee;
(2) The Lieutenant Governor, or his designee;
(3) Three persons appointed by the Governor;
(4) Three persons appointed by the General Assembly on the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121; and
(5) Three persons appointed by the General Assembly on the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121.

Terms of commission members appointed under this section expire on June 30 of the year of expiration. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. In 1990, three members shall be appointed by the General Assembly upon the recommendation of the President of the Senate, one for a term to expire June 30, 1991, one for a term to expire June 30, 1992, and one for a term to expire June 30, 1993. In 1990, three members shall be appointed by the Governor, one for a term to expire June 30, 1992, one for a term to expire June 30, 1993, and one for a term to expire June 30, 1994. Subsequent appointments are for a term of four years.

(b) Each of the appointing entities shall seek to achieve a balanced membership representing, to the maximum extent possible, the State as a whole. The Commission members shall be chosen from among individuals who have demonstrated a commitment to education.

(c) Commission members shall be appointed for four-year terms, with the first appointments to expire July 1, 1990.

(d) In the event a vacancy occurs for any reason, the vacancy shall be filled by appointment by the entity that made the appointment, except that vacancies in appointments by the General Assembly shall be filled under G.S. 120-122. The new appointee shall serve for the remainder of the unexpired term.

(e) The Lieutenant Governor or his designee shall serve as chairman.

(f) Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with Chapter 138 of the General Statutes.

(g) The Commission shall meet regularly at times and places the chairman deems necessary. (1985 (Reg. Sess., 1986), c. 1014, s. 63(a); 1989 (Reg. Sess., 1990), c. 1038, s. 19; 1995, c. 490, s. 58.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore of" in subdivision (a)(4). For the applicability of this amendment, see editor's note.

SUBCHAPTER VI. STUDENTS.

Article 25.

Admission and Assignment of Students.

§ 115C-366. Assignment of student to a particular school.

CASE NOTES

Construed with § 115C-110. — When a more generally applicable statute such as this section conflicts with a more specific, special statute such as § 115C-110(i), the special statute is viewed as an exception to the provisions of the general statute. Accordingly, the specific requirements of § 115-110(i) control where they are in conflict with the general requirements of subsection (a) of this section. Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

County Board of Education could not require the payment of an exit tuition fee as a condition to approving the transfer of a county resident student to a school system in a different county, as the exit tuition fee is not provided for by the constitution and statutes of this State. Streeter v. Greene County Bd. of Educ., 115 N.C. App. 452, 446 S.E.2d 107 (1994).

Place of Child's Actual Abode. — Where child's place of actual abode was clearly in county where he lived with his grandmother, he was a legal resident of the county as long as he continued to live there and was thus entitled to a free appropriate education in this county. Craven County Bd. of Educ. v. Willoughby, 121 N.C. App. 495, 466 S.E.2d 334 (1996).

Cited in Ballard v. Weast, 121 N.C. App. 391, 465 S.E.2d 565 (1996).

§ 115C-366.1. Local boards of education; tuition charges.

CASE NOTES

Residence and Domicile Defined. — Residence simply indicates a person's actual place of abode, whether permanent or temporary, while domicile denotes one's permanent, established home as distinguished from a temporary, although actual, place of residence; furthermore, an unemancipated minor may not establish a domicile different from his parents, surviving parents, or legal guardian, but obviously may reside in a place separate from his parents. Chapel Hill-Carrboro City Sch. Sys. v. Chavioux, 116 N.C. App. 131, 446 S.E.2d 612 (1994).

Although the defendant and her daughter were domiciled outside plaintiff's administrative unit, the daughter resided within that unit; therefore, plaintiff may recover nothing from defendant because it is only empowered to charge tuition to students who do not reside within its administrative unit. Chapel Hill-Carrboro City Sch. Sys. v. Chavioux, 116 N.C. App. 131, 446 S.E.2d 612 (1994).

County Board of Education could not require the payment of an exit tuition fee as a condition to approving the transfer of a county resident student to a school system in a different county, as the exit tuition fee is not provided for by the constitution and statutes of this State. Streeter v. Greene County Bd. of Educ., 115 N.C. App. 452, 446 S.E.2d 107 (1994).

Cited in Ballard v. Weast, 121 N.C. App. 391, 465 S.E.2d 565 (1996).

ARTICLE 26.

Attendance.

Part 1. Compulsory Attendance.

§ 115C-378. Children required to attend.

OPINIONS OF ATTORNEY GENERAL

Transmittal of Educational Records. — Local school boards can and should transmit to the Division of Youth Services (DYS) and other Department of Human Resources (DHR) agencies providing educational services to school age children any requested education records of juveniles committed to their custody or control. Once such education records are obtained by DYS or other DHR facilities they are confidential and must not be released except as permitted by the Family Educational Rights and Privacy Act. See opinion of C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

ARTICLE 27.

Discipline.

§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

(a) Local boards of education shall adopt policies not inconsistent with the provisions of the Constitutions of the United States and North Carolina, governing the conduct of students and establishing procedures to be followed by school officials in suspending or expelling any student, or in disciplining any student if the offensive behavior could result in suspension, expulsion, or the administration of corporal punishment. The policies that shall be adopted for the administration of corporal punishment shall include at a minimum the following conditions:

(1) Corporal punishment shall not be administered in a classroom with other children present;
(2) The student body shall be informed beforehand what general types of misconduct could result in corporal punishment;
(3) Only a teacher, substitute teacher, principal, or assistant principal may administer corporal punishment and may do so only in the presence of a principal, assistant principal, teacher, substitute teacher, teacher assistant, or student teacher, who shall be informed beforehand and in the student's presence of the reason for the punishment; and
(4) An appropriate school official shall provide the child's parent or guardian with notification that corporal punishment has been administered, and upon request, the official who administered the corporal punishment shall provide the child's parent or guardian a written explanation of the reasons and the name of the second school official who was present.

The board shall publish all the policies mandated by this subsection and make them available to each student and his parent or guardian at the beginning of each school year. Notwithstanding any policy adopted pursuant to this section, school personnel may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene in those situations when necessary:

(1) To quell a disturbance threatening injury to others;
(2) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;
(3) For self-defense; or
(4) For the protection of persons or property.

(b) The principal of a school, or his delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education: Provided, that a student suspended pursuant to this subsection shall be provided an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the superintendent, shall have the authority to suspend for periods of times in excess of 10 school days but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the local board of education. The pupil or his parents may appeal the decision of the principal to the local board of education.

(d) Notwithstanding G.S. 115C-378, a local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older whose behavior indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees. The local board of education's decision to expel a student under this section shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subsection, the local board of education shall consider whether there is an alternative program offered by the local school administrative unit that may provide education services for the student who is subject to expulsion. At any time after the first July 1 that is at least six months after the board's decision to expel a student under this subsection, a student may request the local board of education to reconsider that decision. If the student demonstrates to the satisfaction of the local board of education that the student's presence in school no longer constitutes a threat to the safety of other students or employees, the board shall readmit the student to a school in that local school administrative unit on a date the board considers appropriate. Notwithstanding the provisions of G.S. 115C-112, a local board of education has no duty to continue to provide a child with special needs, expelled pursuant to this subsection, with any special education or related services during the period of expulsion.

(d1) A local board of education shall suspend for 365 days any student who brings a weapon, as defined in G.S. 14-269.2(b) and (g), onto school property. The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis which includes, but is not limited to, the procedures set out in G.S. 115C-112 and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services.

(e) A decision of a local board under subsection (c), (d), or (d1) is final and, except as provided in this subsection, is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. A person seeking judicial review shall file a petition in the superior court of the county where the local board made its decision.

(f) Local boards of education shall, no later than December 1, 1993, reevaluate and update their policies related to school safety so they reflect changes authorized by the 1993 General Assembly. In particular, boards shall ensure they have clear policies governing the conduct of students, which state the consequences of violent or assaultive behavior, possessions of weapons, and criminal acts committed on school property or at school-sponsored functions. The State Board shall develop guidelines to assist local boards in this process.

(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158; 1979, c. 874, s. 1; 1981, c. 423, s. 1; 1987, c. 572, ss. 1, 2; c. 827, s. 52; 1989, c. 585, s. 7; 1993, c. 509, s. 4; 1995, c. 293, ss. 1, 2; c. 386, s. 1; 1995 (Reg. Sess., 1996), c. 716, s. 21.)

Editor's Note. — Session Laws 1995, c. 386, s. 3, provides for the development of guidelines by the State Board of Education that define acts and conduct considered a clear threat to the safety of students and teachers, and for the Board to report to the General Assembly and the Joint Legislative Education Oversight Committee regarding the implementation of the act.

Effect of Amendments. — Session Laws 1995, c. 293, ss. 1 and 2, effective August 1, 1995, and applicable to any student who brings a weapon onto school property on or after that date, added subsection (d1), and substituted "(c), (d), or (d1)" for "(c) or (d)" in subsection (e).

Session Laws 1995, c. 386, s. 1, effective September 1, 1995, and applicable to acts committed on or after that date, in subsection (d), in the first sentence added "Notwithstanding G.S. 115C-378", substituted "whose behavior indicates that the student's" for "who has been convicted of a felony and whose", and deleted "and health" following "threat to the safety", added the second through fourth sentences, and made punctuation and stylistic changes.

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subsection (g).

ARTICLE 29.

Protective Provisions and Maintenance of Student Records.

§ 115C-403. Flagging and verification of student records; notification of law enforcement agencies.

OPINIONS OF ATTORNEY GENERAL

Sharing of Educational Records. — Sections 115C-109, 115C-110(a) and subsection (b) of this section represent and embody an intention by the General Assembly that public agencies providing education to school age children share the educational records of children who move or are moved from one of those agencies to another. See opinion of Attorney General to C. Robin Britt, Sr., Secretary North Carolina Department of Human Resources, — N.C.A.G. — (July 24, 1995).

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 30.

Financial Powers of the State Board of Education.

§ 115C-418: Repealed by Session Laws 1995, c. 450, s. 23, effective June 30, 1996.

ARTICLE 31.

The School Budget and Fiscal Control Act.

Part 2. Budget.

§ 115C-426.2. Joint planning.

In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article. (1995 (Reg. Sess., 1996), c. 666, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 666, s. 6, made this section effective July 1, 1996.

§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations. At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, either board may notify the clerk of superior court who shall request the appointment of a mediator by superior court under G.S. 7A-38.1. The mediator shall be appointed within five days of the notification to the clerk. The mediator shall present recommendations for resolution of the matters in dispute within 15 days of the notification to the clerk.

(c) Within five days of receiving the recommendations of the mediator, either board may file an action in the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an action filed under this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent (¾ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed. (1975, c. 437, s. 1; 1981, c. 423, s. 1; 1989, c. 493, s. 2; 1995 (Reg. Sess., 1996), c. 666, s. 3.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, rewrote subsection (b); in subsection (c), in the first paragraph, in the first sentence, substituted "Within five days of receiving the recommendations of the mediator, either board may file an action in" for "Within 10 days after the date of award, either board may appeal the clerk's award to", and in the second to last sentence, substituted "filing of the action" for "appeal"; and substituted "action filed under" for "appeal taken pursuant to" in the first sentence of subsection (e).

Part 3. Fiscal Control.

§ 115C-437. Allocation of revenues to the local school administrative unit by the county.

CASE NOTES

Cited in Craven County Bd. of Educ. v. Boyles, 343 N.C. 87, 468 S.E.2d 50 (1996).

§ 115C-440.1. Report on county spending on public capital outlay.

(a) It is the purpose of Article 42 of Chapter 105 of the General Statutes for counties to appropriate funds generated under that Article to increase the level of county spending for public elementary and secondary school capital outlay (including retirement of indebtedness incurred by the county for this purpose) above and beyond the level of spending prior to the levy of the additional tax authorized under that Article.

(b) On or before May 1 of each year the Local Government Commission shall furnish to the General Assembly a report of the level of each county's appropriations for public school capital outlay, including appropriations to the public school capital outlay fund, funds expended by counties on behalf of and for the benefit of public schools for capital outlay, monies reserved for future years' retirement of debt incurred or capital outlay, and any other information the Local Government Commission considers relevant. For purposes of this subsection, the term "public schools" includes charter schools, if authorized. The Local Government Commission shall develop and implement by May 1, 1997, a uniform reporting system whereby counties are able to report all county expenditures under this subsection.

(c) Any local board of education may petition the Local Government Commission to make a finding that the funds provided by a county for public school capital outlay purposes are, within the financial resources available and consistent with the fiscal policies of the Board of County Commissioners, inadequate to meet the public school capital outlay needs within that county and that the Board of County Commissioners has not complied with the requirements or intent of this Article. The petition shall be in the form prescribed by the Commission. In making its finding, the Commission shall consider the facts it is required to report under subsection (b) of this section, as well as any other information it deems necessary. The Commission shall report its findings on such petition, together with any recommendations it deems appropriate, to the Joint Legislative Commission on Governmental Operations. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1995, c. 507, s. 17.5; 1995 (Reg. Sess., 1996), c. 666, ss. 4, 5.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, recodified former G.S. 105-503 as this section; in subsection (a), substituted "Article 42 of Chapter 105 of the General Statutes" for "this Article", and substituted "that" for "this" preceding "Article" twice; rewrote subsection (b); and substituted "subsection (b) of this section" for "G.S. 105.503" in the next to last sentence of subsection (c).

ARTICLE 32A.

Scholarship Loan Fund for Prospective Teachers.

§ 115C-468. Establishment of fund.

(a) There is established a revolving fund known as the "Scholarship Loan Fund for Prospective Teachers".

(b) Criteria for awarding scholarship loans from the fund shall include measures of academic performance including grade point averages, scores on standardized tests, class rank, and recommendations of guidance counselors and principals. To the extent practical, an equal number of scholarships shall be awarded in each of the State's Congressional Districts.

(c) The Superintendent of Public Instruction may earmark up to twenty percent (20%) of the funds available for scholarship loans each year for awards to applicants who have been employed for at least one year as teacher assistants and who are currently employed as teacher assistants. Preference for these scholarship loans from funds earmarked for teacher assistants shall be given first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The criteria for awarding scholarship loans to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished shall include whether the teacher assistant has been admitted to an approved teacher education program in North Carolina.

The Superintendent of Public Instruction may further earmark a portion of these funds each year for two-year awards to applicants who have been employed for at least one year as teacher assistants to attend community colleges to get other skills of use in public schools or to get an early childhood associate degree. The provisions of this Article shall apply to these scholarship loans except that a recipient of one of these scholarship loans may receive credit upon the amount due by reason of the loan as provided in G.S. 115C-471(5) or by working in a nonteaching position in the North Carolina public schools or by working in a licensed day care center in North Carolina. (1957, c. 1237; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1; 1987, c. 738, s. 198(b); 1993, c. 260, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 18.10.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (c), in the first paragraph inserted "first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then" in the second sentence and added the last sentence; and added the second paragraph.

§ 115C-471. Fund administered by State Superintendent of Public Instruction; rules and regulations.

The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under rules adopted by the State Board of Education and subject to the following directions and limitations:

(1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State may apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than two thousand five hundred dollars ($2,500) per academic school year. An applicant who has been employed for

at least one year as a teacher assistant and who is currently employed as a teacher assistant may apply for a scholarship loan from funds earmarked for teacher assistants in the amount of not more than one thousand two hundred dollars ($1,200) per academic school year.

(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education that bear interest at the rate of ten percent (10%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a certificate based upon the entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans, the notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of the scholarship loans; or in the event any such scholarship is terminated under the provisions of subdivision (3) of this section, the notes shall bear interest from the date of termination. A minor recipient who signs a note shall also obtain the endorsement thereon by a parent, if there be a living parent, unless the endorsement is waived by the Superintendent of Public Instruction. The minor recipient shall be obligated upon the note as fully as if the recipient were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon the notes.

(3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until the recipient has qualified for a certificate based upon the entry level degree, but the recipient shall not be so eligible for more than the minimum number of years normally required for qualifying for the certificate. The permanent withdrawal of any recipient from college or failure of the recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction shall immediately forfeit the recipient's right to retain the scholarship and subject the scholarship to termination by the State Superintendent of Public Instruction in the Superintendent's discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

(4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a certificate based upon the entry level degree or, in case of persons already teaching in the public schools, at the beginning of the next school term after the use of the loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered by August 31 of the seventh school year following graduation.

(5) For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of the loan equal to the loan amount for a school year as provided in the note plus credit for the total interest accrued on that amount. Also, the recipient of the loan shall receive credit upon the

total amount due by reason of all four years of the loan if the recipient teaches for three consecutive years, or for three years interrupted only by an approved leave of absence, at a North Carolina public school that is in a low-performing school system or a school system on warning status at the time the recipient accepts employment with the local school administrative unit. In lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof that has not been canceled by the State Board of Education by reason of teaching service rendered.

(6) If any recipient of a scholarship loan dies during the period of attendance at a college or university under a scholarship loan or before the scholarship loan is satisfied by payment or teaching service, any balance shall be automatically canceled.

If any recipient of a scholarship loan fails to fulfill the recipient's obligations under subdivision (4) of this section, other than as provided above, the amount of the loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill the recipient's obligations.

(7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to factors and circumstances such as aptitude, purposefulness, scholarship, character, financial need, and geographic areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference for scholarship loans, except for the scholarship loans from funds earmarked for teacher assistants, shall be given to high school seniors in the awarding of scholarships. In awarding scholarship loans from funds earmarked for teacher assistants, preference shall be given to applicants who have already earned a baccalaureate degree or who have been formally admitted to an approved teacher education program in North Carolina. (1957, c. 1237; 1973, c. 581, ss. 1, 2; 1975, c. 750, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 10.1; 1987, c. 738, ss. 198(c), (d), (e); 1989 (Reg. Sess., 1990), c. 1066, s. 95; 1993, c. 260, s. 2; 1995, c. 435, s. 1.)

Editor's Note. — Session Laws 1995, c. 435, s. 2, effective July 13, 1995, provides that the 1995 amendments to subdivision (2) of this section, which changed the rate at which scholarship loans would bear interest to ten percent, are applicable only to scholarship loan agreements entered into after the effective date of the act (July 13, 1995).

Effect of Amendments. — The 1995 amendment, effective July 13, 1995, in subdivision (1) substituted "two thousand five hundred dollars ($2,500)" for "two thousand dollars ($2,000)"; in subdivision (2) substituted "ten percent (10%)" for "six percent (6%)"; and in subdivision (5) divided the former sentence in that subdivision into the present first and third sentences, deleted "provided, however, that in" from the end of the present first sentence, and added the second sentence.

ARTICLE 34A.

Critical School Facility Needs Fund.

§ 115C-489.1. (For contingent repeal see note) Creation of Fund; administration.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 14, provides: "Effective 30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2, Article 34 of Chapter 115C of the General Statutes is repealed. Any unexpended funds in the Critical School Facility Needs Fund, as provided for in G.S. 115C-489.1, which is repealed by this section, are transferred to the Public School Building Capital Fund created in G.S. 115C-546.1." As of October 15, 1996, this contingency had not been met.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 1 provides that this act shall be known and may be cited as the Public School Building Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 11(e), is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

§ 115C-489.2. (For contingent repeal see note) Grants from the Fund.

(a) The board of education and the boards of county commissioners of the county in which the local school administrative unit is located in whole or in part shall apply jointly for a grant from the Fund to meet a particular critical need in the local school administrative unit. Grants may be made only for projects that meet the statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3.

The application shall contain information on how the critical need for which funds are requested would be met and how much State money is required for the project. The application shall also include an analysis of the school facility needs of the county and a long-range plan for meeting those needs.

At the request of a board of county commissioners or a local board of education, the State Board of Education shall provide technical assistance in facility planning to a local school administrative unit and a county preparing an application for a grant from the Fund.

(b) The State Board of Education shall make grants from the Fund based on the grant priority list established in 1988 by The Commission on School Facility Needs until the next 11 local school administrative units on that priority list are funded. (1987, c. 622, s. 13; c. 813, s. 18; 1995 (Reg. Sess., 1996), c. 631, s. 12.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 14, provides: "Effective 30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2, Article 34 of Chapter 115C of the General Statutes is repealed. Any unexpended funds in the Critical School Facility Needs Fund, as provided for in G.S. 115C-489.1, which is repealed by this section, are transferred to the Public School Building Capital Fund created in G.S. 115C-546.1." As of October 15, 1996, this contingency had not been met.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 1 provides that this act shall be known and may be cited as the Public School Building Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 11(e), is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, rewrote subsection (b).

§§ 115C-489.3, 115C-489.4: Repealed by Session Laws 1995 (Regular Session, 1996), c. 631, s. 13, effective June 21, 1996.

Editor's Note. — For provisions regarding erection of school buildings, see G.S. 115C-521. Former G.S. 115C-489.3(c) provided that the statewide school facility minimum standards adopted by the State Board of Education pursuant to that section should apply to the construction, reconstruction, enlargement, and improvement of all school buildings after the standards were adopted, regardless of the source of the funds for the project.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 1 provides that this act shall be known and may be cited as the Public School Building Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 11(e), is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

Session Laws 1996, Second Extra Session, c. 18, s. 18.17(b), effective August 3, 1996, repealed G.S. 115C-489.3(c), regarding application of the statewide school facility minimum standards. Because this section was repealed by Session Laws 1995 (Regular Session, 1996), c. 631, s. 13, this separate repeal of subsection (c) is not set out.

Session Laws 1996, Second Extra Session, c. 18, s. 18.18, provides for the creation of the School Facilities Task Force under the State Board of Education, for the membership and duties of the Task Force, and for recommendations to the State Board and adoption by the State Board of guidelines, procedures, and a plan to establish a central clearinghouse for prototype designs. The State Board shall submit a report by April 15, 1997, to the General Assembly regarding these items, and the Task Force shall terminate upon submission of this report

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

ARTICLE 36.

Voted Tax Supplements for School Purposes.

§ 115C-513. Special tax for certain merged school administrative units.

(a) Scope. — This section applies to a merged school administrative unit that consists of one entire county and part of a second county and is composed of two merging units, one of which is located within one county and one of which is located partly in the same county as the first unit and partly in a second county. A merged school administrative unit to which this section applies may levy taxes as provided in this section to be applied to the payment of notes, bonds, or refunding bonds issued to finance capital costs of school facilities as described in G.S. 159-48.

(b) Issuance of Bonds. — The board of education of a merged school administrative unit may issue notes, bonds, or refunding bonds at one time or from time to time to pay the capital costs of school facilities as described in G.S. 159-48. The bonds shall be issued and maintained in accordance with the provisions of Articles 1, 4, 5A, 7, 9, 10, and 11 of Chapter 159 of the General Statutes, except as modified by this section.

The board of education of a merged school administrative unit shall call for a referendum authorizing the issuance of notes, bonds, and refunding bonds and the levy of a tax to pay amounts relating to these notes, bonds, or refunding bonds. The referendum may be called only with the consent of the boards of commissioners of both counties in which the merged school administrative unit is located. The referendum shall be held in the merged school administrative unit and only those qualified voters who reside in the unit may vote. The board of commissioners of each county shall have the referendum conducted by the board of elections of its county.

After issuance of the approved bonds, the merged school administrative unit shall make timely payments of principal and interest on the bonds after receipt of notification of its debt service obligation pursuant to G.S. 159-35. The provisions of G.S. 159-36 govern a failure by the merged school administrative unit to levy taxes or otherwise provide for payment of the debt.

Bonds, notes, and refunding bonds issued under this section shall be exempt from all State, county, and municipal taxation and assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds, notes, and refunding bonds, and franchise taxes. The interest on bonds, notes, and refunding bonds is not subject to taxation as income.

Article 9 of the North Carolina Uniform Commercial Code, Chapter 25 of the General Statutes, does not apply to any security interest created in connection with the issuance of bonds under this section.

(c) Tax. — If a majority of the qualified voters of a merged school administrative unit voting on the question approve the issuance of bonds and levy of a tax as provided in this section, the board of education of the merged school administrative unit may levy a tax on all property having a situs in the merged school administrative unit for the purpose of retiring bonds issued by the unit under this section. Taxes levied pursuant to this section may be levied prior to the issuance of notes or bonds. The authority of a merged school administrative unit to levy a tax pursuant to this section terminates after all of the related notes, bonds, and refunding bonds are discharged or paid.

Before April 15 of each year, the tax assessor of each county in which the merged school administrative unit is located shall certify to the superintendent of schools an estimate of the total assessed value of property in the county subject to taxation on behalf of the merged school administrative unit pursuant to this Article. The board of education of the merged school administrative unit, in the budget it submits to each board of county commissioners, shall set the rate of ad valorem tax it levies as a tax under this section. The levy under this section shall be at the rate necessary to provide for payment of interest on and principal of outstanding notes, bonds, and refunding bonds issued by the merged school administrative unit.

Each county in which the merged school administrative unit is located shall compute and collect this tax in the same manner that county taxes are collected. The tax shall be shown separately on the tax receipts for the fiscal year. Collections shall be remitted to the merged school administrative unit within 10 days after the close of each calendar month. Partial payments shall be proportionally divided between the county collecting the tax and the merged school administrative unit. The board of commissioners of each county collecting the tax levied under this section may, in its discretion, deduct from the proceeds of the tax the actual additional cost to the county of computing, billing, and collecting the tax. (1991, c. 325, s. 3; 1995, c. 46, s. 4.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, in subsection (b), in the first paragraph, made a stylistic change, and in the fourth paragraph, in the first sentence, deleted "and their transfer (including any profit made on the sale thereof)" following "under this section", and added "income taxes on the gain from the transfer of bonds, notes, and refunding bonds, and franchise taxes" at the end, in the second sentence, deleted "to" preceding "income", and deleted the former third sentence which read "The bonds, notes, and refunding bonds are not subject to taxation when they constitute a part of the surplus of a bank, trust company, or other corporation."

SUBCHAPTER IX. PROPERTY.

ARTICLE 37.

School Sites and Property.

§ 115C-517. Acquisition of sites.

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be conclusive. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290; 1981, c. 423, s. 1; c. 1127, s. 78; 1995, c. 199, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 8, 1995, deleted "Provided, that not more than a total of 50 acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid" from the end of the section and made a related change.

CASE NOTES

Presumption exists that school board will act in good faith and comply with all applicable state and federal regulations in its plans to enlarge school facilities. Board of Educ. v. Seagle, 120 N.C. App. 566, 463 S.E.2d 277 (1995).

Discretion of School Authorities. —

County board of education had the discretion to determine what land constituted a "suitable site" to construct its athletic facilities and what land was "necessary" to construct its athletic facilities. The board had authority to condemn land to be used as wetlands mitigation and a source of fill as necessary to building athletic facilities in an environmentally sensitive area. Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995), aff'd, 342 N.C. 648, 466 S.E.2d 717, rehearing denied, 343 N.C. 128, 468 S.E.2d 778 (1996).

The courts are bound by the discretionary decision of a local board of education in selecting and determining the land necessary to construct a school, school building, school bus garage, a parking area, an access road suitable for school buses or "other school facilities" unless that decision is an arbitrary abuse of discretion or disregard of law. Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995), aff'd, 342 N.C. 648, 466 S.E.2d 717, rehearing denied, 343 N.C. 128, 468 S.E.2d 778 (1996).

Necessity of Permits. — Whether permits would be required to satisfy § 404 of the Clean Water Act did not raise an issue of fact concerning the need for school board to secure a permit before proceeding with expansion requiring condemnation of defendant's property, and that issue had nothing to do with whether the school board had found the land to be a "suitable site" for its needs. Board of Educ. v. Seagle, 120 N.C. App. 566, 463 S.E.2d 277 (1995).

§ 115C-518. Disposition of school property; easements and rights-of-way.

Local Modification. — Cleveland: 1995, c. 201, s. 1; Graham County Board of Education: 1995, c. 154, s. 2; Pender County Board of Education: 1996, Second Ex. Sess., c. 16, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 115C-521. Erection of school buildings.

(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by January 1, 1988, and every five years thereafter. In developing these plans, local boards of education shall consider the costs and feasibility of renovating old school buildings instead of replacing them.

(b) It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the operation of the school, relocatable or mobile classroom units, whether built on the lot or not, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. No board of education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board. No local board of education shall contract for more money than is made available for the erection of a new building. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441(c1). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor. Nothing in this subsection shall prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under any rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in whole or in part, from the loan or grant funds, shall have been approved by a designated agent of the State Board of Education. Upon approval by the State Board of Education, the State Treasurer may pay the balance of the loan or grant to the treasurer of the local school administrative unit for which the loan or grant was made.

(d) Local boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the board: Provided, that the board of education of a local school administrative unit, with the approval of the board of county commissioners, may appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining local school administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of the boards, whereby children from the administrative unit making the appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to the property shall be vested in the local board of education of the county embracing the former special charter district.

(e) The State Board of Education shall establish within the Department of Public Instruction a central clearinghouse for access by local boards of education that may want to use a prototype design in the construction of school facilities. The State Board shall compile necessary publications and a computer database to distribute information on prototype designs to local school administrative units. All architects and engineers registered in North Carolina may submit plans for inclusion in the computer database and these plans may be accessed by any person. The original architect of record or engineer of record shall retain ownership and liability for a prototype design. The State Board may adopt rules it considers necessary to implement this subsection. (1955, c. 1372, art. 15, ss. 5-7; 1969, c. 1022, s. 1; 1981, c. 423, s. 1; c. 638, s. 1; 1983, c. 761, s. 93; 1985, c. 783, s. 3; 1987, c. 622, s. 14; 1993, c. 416, s. 1; c. 465, s. 1; 1993 (Reg. Sess., 1994), c. 775, s. 6; 1995, c. 8, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.17(c), (d).)

Local Modification. — Lenoir County Board of Education: 1995, c. 200, s. 1.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

The statewide school facility minimum standard were to be adopted under prior G.S. 115C-489.3, repealed by Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 13, effective June 21, 1996.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which amended this section, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1995 amendment, effective March 13, 1995, and applicable to cost and feasibility analyses submitted to the State Superintendent on or after that date, inserted "and the State Superintendent submits to the North Carolina Historical Commission" following "to the State Superintendent" in the second sentence of the first paragraph of subsection (c).

Session Laws 1996, Second Extra Session, c. 18, ss. 18.17(c) and (d), effective August 3, 1996, in the first paragraph of subsection (c) substituted "No board of education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board" for "Boards of education shall also not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor", in the fourth sentence added "No local board of education shall" at the beginning and substituted "the erection of a new building" for "its erection," deleted "Provided, that this subsection shall not" from the end of the next to last sentence, added "Nothing in this subsection shall" at the beginning of the last sentence; and added subsection (e).

§ 115C-522. Provision of equipment for buildings.

(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase.

(b) It shall be the duty of the local boards of education to provide suitable school furniture and apparatus, as provided in G.S. 115C-521(b).

(c) It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, black-boards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of Environment, Health, and Natural Resources, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Health Services. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1352, art. 5, s. 35; art. 15, s. 8; 1965, c. 840; 1973, c. 476, s. 128; 1981, c. 423, s. 1; 1985, c. 436, s. 2; 1989, c. 727, s. 219(33); 1995 (Reg. Sess., 1996), c. 716, s. 13.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28, provides: "(a) G.S. 150B-21.2(a) shall not apply to proposed adopted by the State Board of Education if the proposed rules are directly related to the implementation of this act.

"(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is directly related to the implementation of this act, shall become effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education that is directly related to the implementation of this act, but is not approved by the Rules Review Commission, shall not become effective.

"(c) G.S. 150-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are directly related to the implementation of this act.

"(d) The State Board of Education shall determine whether a proposed rule is directly related to this act based upon a finding that there is a rational relationship between the proposed rule and specific provisions of this act. A proposed rule may create, amend, or repeal a rule. The State Board shall indicate in the notice of the proposed text that the rule is directly related to the implementation of this act and that the Board is proceeding under the authority granted by this act.

"(e) The State Board of Education shall provide written notice to all boards of county commissioners and all local boards of education of proposed rules that are directly related to the implementation of this act and that would affect the expenditures or revenues of a unit of local government under G.S. 150B-21.4(b). The notice shall state that a copy of the fiscal note may be obtained from the State Board.

"(f) This section shall not apply to Sections 11-15.1 of this act."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "and G.S. 115C-528" following "G.S. 115C-47(28)" in subsection (a).

§ 115C-522.1. Pilot program for provision of equipment from other sources.

(a) The State Board of Education shall develop and implement a pilot program allowing selected local school administrative units to purchase supplies, equipment, and materials from noncertified sources. In developing the program, the State Board shall collaborate with the Department of Administration on establishing standards, specifications, and any other measures necessary to implement and evaluate the pilot program. The State Board shall initially select twelve (12) local school administrative units that are diverse in geography and size to participate in the pilot program. If the

State Board thereafter determines that the pilot program is effective, efficient, and in the best interest of the public schools, the State Board shall have the authority to expand the pilot program to additional local school administrative units.

(b) Local school administrative units participating in the pilot program shall have the authority to purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;
(2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1;
(3) The local school administrative unit documents in writing the cost savings; and
(4) The local school administrative unit shall provide annually by August 15 an itemized report of the cost savings to the State Board of Education.

(c) The requirements listed in subsection (b) of this section shall not apply to purchases from noncertified sources that fall below the economic ordering quantity of a State term contract.

(d) The State Board of Education shall provide to the Department of Administration copies of the itemized annual reports produced by the local school administrative units participating in the pilot program. The State Board shall evaluate the information provided by the participating units and shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by October 1, 1997, and annually thereafter. (1995 (Reg. Sess., 1996), c. 716, s. 15.1)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 15.1, was codified as this section at the direction of the Revisor of Statutes.

§ 115C-528. Lease purchase and installment purchase contracts for certain equipment.

(a) Local boards of education may purchase or finance the purchase of automobiles; school buses; mobile classroom units; photocopiers; and computers, computer hardware, computer software, and related support services by lease purchase contracts and installment purchase contracts as provided in this section. Computers, computer hardware, computer software, and related support services purchased under this section shall meet the technical standards specified in the North Carolina Instructional Technology Plan as developed and approved under G.S. 115C-102.6A and G.S. 115C-102.6B.

(b) A lease purchase contract under this section creates in the local board the right to possess and use the property for a specified period of time in exchange for periodic payments and shall include either an obligation or an option to purchase the property during the term of the contract. The contract may include an option to upgrade the property during the term. A local board may exercise an option to upgrade without rebidding the contract.

(c) An installment purchase contract under this section creates in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(d) The term of a contract entered into under this section shall not exceed the useful life of the property purchased. An option to upgrade shall be considered in determining the useful life of the property.

(e) A contract entered into under this section shall be considered a continuing contract for capital outlay and subject to G.S. 115C-441(c1).

(f) A contract entered into under this section is subject to Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2).

(g) Subsections (e) and (f) of this section shall not apply to contracts entered into under this section so long as the term of each contract does not exceed three years and the total amount financed during any three-year period is no greater than two hundred fifty thousand dollars ($250,000) or is no greater than three times the local board's annual State allocation for classroom materials, equipment, and instructional supplies, whichever is less. The local board shall submit information, including the principal and interest paid and the amount of outstanding obligation, concerning these contracts as part of the annual budget it submits to its board of county commissioners under Article 31 of this Chapter.

(h) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a local board to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any property financed or purchased by the contract.

(i) No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. (1995 (Reg. Sess., 1996), c. 716, s. 14.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 32, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 28, provides: "(a) G.S. 150B-21.2(a) shall not apply to proposed adopted by the State Board of Education if the proposed rules are directly related to the implementation of this act.

"(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is directly related to the implementation of this act, shall become effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education that is directly related to the implementation of this act, but is not approved by the Rules Review Commission, shall not become effective.

"(c) G.S. 150-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are directly related to the implementation of this act.

"(d) The State Board of Education shall determine whether a proposed rule is directly related to this act based upon a finding that there is a rational relationship between the proposed rule and specific provisions of this act. A proposed rule may create, amend, or repeal a rule. The State Board shall indicate in the notice of the proposed text that the rule is directly related to the implementation of this act and that the Board is proceeding under the authority granted by this act.

"(e) The State Board of Education shall provide written notice to all boards of county commissioners and all local boards of education of proposed rules that are directly related to the implementation of this act and that would affect the expenditures or revenues of a unit of local government under G.S. 150B-21.4(b). The notice shall state that a copy of the fiscal note may be obtained from the State Board.

"(f) This section shall not apply to Sections 11-15.1 of this act."

§ 115C-529. Useful life guidelines.

The Information Resource Management Commission shall develop and annually revise guidelines for determining the useful life of computers purchased under G.S. 115C-528. The Division of Purchase and Contract shall develop and periodically revise guidelines for determining the useful life of automobiles, school buses, and photocopiers purchased under G.S. 115C-528. The Local Government Commission shall develop and periodically revise guidelines for determining the useful life of mobile classroom units purchased under G.S. 115C-528. Guidelines for computers and photocopiers shall include provisions for upgrades during the term of the contract. The Information Resource Management Commission, the Division of Purchase and Contract, and the Local Government Commission shall provide their respective guidelines to the State Board of Education by November 1, 1996. The State Board of Education shall provide the guidelines to local boards of education by January 1, 1997. (1995 (Reg. Sess., 1996), c. 716, s. 15)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 15, was codified as this section at the direction of the Revisor of Statutes.

ARTICLE 38A.

Public School Building Capital Fund.

§ 115C-546.1. Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) **(Effective until October 1, 1997 — see notes)** Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to two thirty-firsts (2/31) of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars ($2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(b) **(Effective October 1, 1997 — see notes)** Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars ($2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

Period	*Fraction*
10/1/97 to 9/30/98	One-fifteenth (1/15)

§ 115C-546.1(b) is set out twice. See notes.

10/1/98 to 9/30/99	Two twenty-ninths (2/29)
10/1/99 to 9/30/00	One-fourteenth (1/14)
After 9/30/00	Five sixty-ninths (5/69)

(c) The Fund shall be administered by the Office of State Budget and Management. (1987, c. 622, s. 12; c. 813, s. 20; 1989 (Reg. Sess., 1990), c. 1066, s. 28(b); 1991, c. 689, s. 260; 1995 (Reg. Sess., 1996), c. 631, s. 15; 1996, 2nd Ex. Sess. c. 13, s. 2.2.)

Subsection (b) Set Out Twice. — The first version of subsection (b) is effective until October 1, 1997, subject to a contingent amendment described in the Editor's note, below. The second version of subsection (b) is effective October 1, 1997, subject to the same contingent amendment, described in the Editor's note, below.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 15, provides for the amendment of subsection (b) by deleting "minus two million five hundred thousand dollars ($2,500,000)" at the end of the first sentence. Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides that section 15 of the act becomes effective "30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2." As of the date of the 1996 Cumulative Supplement, the contingency described in Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, has not occurred; thus the amendment by section 15 of that act has not become effective.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 1 provides that this act shall be known and may be cited as the Public School Building Bond Act of 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 11(e), is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 631, s. 17, provides in part: "This act does not obligate the General Assembly to appropriate funds."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 13, s. 2.2, effective October 1, 1997, and applicable to remittances made on or after that date, in subsection (b) substituted "the applicable fraction provided in the table below" for "two-thirty firsts (2/31)," and added the table.

TABLES OF COMPARABLE SECTIONS FOR CHAPTER 115C

Former to Present

Editor's Note. — The following table shows G.S. sections from former Chapter 115C and their comparable, new Chapter 115C numbers.

Former Section	Present Section	Former Section	Present Section
115C-238.1	115C-105.20	115C-238.6	115C-105.29
115C-238.2	115C-105.21	115C-238.6A	115C-105.30
115C-238.3	115C-105.27	115C-238.7	115C-105.31
115C-238.4	115C-105.28	115C-238.8	115C-105.32

Present to Former

Editor's Note. — The following table shows G.S. sections of current Chapter 115C and their comparable, former Chapter 115C section numbers.

Present Section	Former Section	Present Section	Former Section
115C-105.20	115C-238.1	115C-105.29	115C-238.6
115C-105.21	115C-238.2	115C-105.30	115C-238.6A
115C-105.27	115C-238.3	115C-105.31	115C-238.7
115C-105.28	115C-238.4	115C-105.32	115C-238.8

Chapter 115D.

Community Colleges.

Article 1.

General Provisions for State Administration.

Sec.
115D-2.1. State Board of Community Colleges.
115D-4.1. College transfer program approval; standards for programs.
115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

Article 2.

Local Administration.

115D-12. Each institution to have board of trustees; selection of trustees.
115D-19. Removal of trustees.

Article 3.

Financial Support.

115D-31. State financial support of institutions.
115D-32. Local financial support of institutions.
115D-39. Student tuition and fees.

ARTICLE 1.

General Provisions for State Administration.

§ 115D-2.1. State Board of Community Colleges.

(a) The State Board of Community Colleges is established.

(b) The State Board of Community Colleges shall consist of 20 members, as follows:

(1) The Lieutenant Governor (or a person designated by the Lieutenant Governor) shall be a member ex officio.

(2) The Treasurer of North Carolina shall be a member ex officio.

(3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in G.S. 115D-63 [G.S. 115D-62]. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member.

(4) The General Assembly shall elect eight members of the State Board from the State at large in the following manner:

a. In 1980, the Senate shall elect three members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and one of whom shall serve a term expiring June 30, 1985. In 1985, the Senate shall elect two members to serve terms expiring June 30, 1991. Each subsequent regular election by the Senate shall be for a term of six years and until a successor is elected and qualifies.

b. In 1980, the House of Representatives shall elect four members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and two of whom shall serve a term expiring June 30, 1985. In 1985, the House of Representatives shall elect two members, to serve terms expiring June 30, 1991. Each subsequent regular election by the House of Representatives shall be for a term of six years and until a successor is elected and qualifies.

c. Repealed by Session Laws 1985, c. 227, s. 5.

d. The initial elections by the two houses of the General Assembly shall be held on or before July 1, 1980.

e. Any vacancy occurring among the members elected by the two houses of the General Assembly before the expiration of term shall be filled when the General Assembly next convenes. The member then elected shall be elected by the same house that elected the member whom he succeeds, and shall serve for the remainder of the unexpired term of that member.

f. At each session of the General Assembly held in an odd-numbered year, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote "aye" or "no" on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates is submitted to each committee, then each committee shall nominate at least two persons for each place to be filled by that chamber, otherwise each committee shall nominate at least one person for each place to be filled by each of the House of Representatives and the Senate. No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote "aye," persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board.

(c) No person may be appointed or elected to more than two consecutive terms of six years on the State Board.

(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board. Furthermore, no person who within the prior 5 years has been an employee of the Department of Community Colleges shall be eligible to serve on the State Board.

(e) The Governor shall convene the membership of the State Board on July 1, 1980, or as soon as feasible thereafter. The State Board at that meeting shall elect from its appointed or elected membership a chairman and such other officers as it may deem necessary.

(f) At its first meeting after July 1, 1981, and every two years thereafter, the State Board shall elect from its membership a chairman and such other officers as it may deem necessary.

(g) The State Board of Community Colleges shall meet at stated times established by the State Board, but not less frequently than 10 times a year. The State Board of Community Colleges shall also meet with the State Board of Education and the Board of Governors of The University of North Carolina at least once a year to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in this State; these joint meetings shall be hosted by the three Boards according to the schedule set out in G.S. 115C-11(b1). Special meetings of the State Board may be set at any regular meeting or may be called by the chairman. A majority of the qualified members of the State Board shall constitute a quorum for the transaction of business.

(h) Whenever any vacancy shall occur in the appointed membership of the State Board, the chairman shall inform the appropriate appointing authority of the vacancy.

(i) The State Board of Community Colleges may declare vacant the office of an appointed or elected member who does not attend three consecutive scheduled meetings without justifiable excuse. The chairman of the State Board shall notify the appropriate appointing or electing authority of any vacancy. (1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474; 1983, c. 311; c. 479, ss. 1-3; 1985, c. 227, ss. 1-5; c. 428; 1987 (Reg. Sess., 1988), c. 1102, s. 2; 1991, c. 83, s. 1; 1993, c. 69, s. 2; 1995, c. 192, s. 1; c. 470, ss. 3, 4.)

Effect of Amendments. — Session Laws 1995, c. 192, s. 1, effective June 7, 1995, and applicable to absences occurring on or after that date, added subsection (i).

Session Laws 1995, c. 470, ss. 3 and 4, effective July 24, 1995, and applicable to terms beginning on or after that date, in subdivision (b)(4)f. rewrote the eighth sentence, and deleted the ninth sentence, regarding nominations by the Senate; and added the last sentence of subsection (d).

§ 115D-4. Establishment of institutions; capital improvements.

Editor's Note. — Session Laws 1995, c. 269, s. 1, provides that a pilot correction education program that would allow prison inmates to participate in community college capital construction projects is established. The State Board of Community Colleges shall report to the General Assembly prior to January 1, 1997 on the progress of the program.

§ 115D-4.1. College transfer program approval; standards for programs.

(a) Repealed by Session Laws 1995, c. 288, s. 1, effective September 1, 1995.

(b) The State Board of Community Colleges may approve the addition of the college transfer program to a community college. If addition of the college transfer program to an institution would require a substantial increase in funds, State Board approval shall be subject to appropriation of funds by the General Assembly for this purpose.

(c) Addition of the college transfer program shall not decrease an institution's ability to provide programs within its basic mission of vocational and technical training and basic academic education.

(d) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the addition of the college transfer program to institutions.

(e) The State Board of Community Colleges shall develop appropriate criteria and standards to regulate the operation of college transfer programs. The criteria and standards shall require:

(1) All college transfer programs to continue to meet the

accreditation standards of the Southern Association of Colleges and Schools,

(2) Each community college that offers a college transfer program to have an articulation agreement with at least one four-year college or university for the acceptance of those courses,

(3) Each community college that offers a college transfer program to disclose to students when they register for college transfer courses the articulation agreements the community college has with a four-year college or university.

The State Board of Community Colleges shall report annually to the General Assembly on compliance of the community colleges with these criteria and standards.

(f) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges in accordance with G.S. 116-11(10b) on the academic performance of that community college's transfer students. If the State Board of Community Colleges finds that college transfer students from a community college are not consistently performing adequately at a four-year college, the Board shall review the community college's program and determine what steps are necessary to remedy the problem. The Board shall report annually to the General Assembly on the reports it receives and on what steps it is taking to remedy problems that it finds. (1987, c. 564, s. 4; 1995, c. 288, s. 1.)

Cross References. — For provisions regarding implementation and monitoring of the plan for transfer of credits between North Carolina institutions of higher education as enacted by Session Laws 1995 (Reg. Sess., 1996), c. 625, see the editor's note under § 115D-5.

Editor's Note. — Session Laws 1995, c. 287, ss. 1-3, effective June 19, 1995, provides for the development, by the Board of Governors of the University of North Carolina and the State Board of Community Colleges, of a plan for the transfer of credits between the institutions of the North Carolina Community College System, and between those institutions and the constituent institutions of The University of North Carolina, the intention of the General Assembly to adopt a plan for the transfer of credits, and the implementation, by the State Board of Community Colleges, of a common course numbering system.

Effect of Amendments. — The 1995 amendment, effective September 1, 1995, added "standards for programs" in the catchline; deleted subsection (a) regarding limitations on enrollment in the college transfer program of community colleges that offered the program before July 1, 1987; deleted the second sentence of subsection (c) regarding limitations on enrollment in the college transfer program of community colleges that offered the program after July 1, 1987; deleted the second sentence of subsection (d) regarding the State Board's authority to apply proposed rules for the addition of college transfer programs; added subsections (e) and (f); and made punctuation and stylistic changes.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees within policies for tuition and fees established by the General Assembly; and to establish and regulate financial accounting procedures.

The State Board of Community Colleges shall require all community colleges to meet the faculty credential requirements of the Southern Association of Colleges and Schools for all community college programs.

(a1) Notwithstanding G.S. 66-58(c)(3) or any other provisions of law, the State Board of Community Colleges may adopt rules governing the expenditure of funds derived from bookstore sales by community colleges. These expenditures shall be consistent with the mission and purpose of the Community College System. Profits may be used in the support and enhancement of the bookstores, for student aid or scholarships, for expenditures of direct benefit to students, and for other similar expenditures authorized by the board of trustees, subject to rules adopted by the State Board. These funds shall not be used to supplement salaries of any personnel.

(a2) The State Board of Community Colleges shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the Division of Youth Services of the Department of Human Resources required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Human Resources Development Programs, juveniles of any age committed to the Division of Youth Services of the Department of Human Resources by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section.

(c) No course of instruction shall be offered by any community college at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(c1) Community colleges shall report full-time equivalent (FTE) student hours for correction education programs on the basis of contact hours rather than student membership hours. No community college shall operate a multi-entry/multi-exit class or program in a prison facility, except for a literacy class or program.

The State Board shall work with the Department of Correction on offering classes and programs that match the average length of stay of an inmate in a prison facility.

(d) Community colleges shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. Such training shall include instruction on worker safety and health standards and practices applicable to the field of employment. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(e) The State Board of Community Colleges is authorized to enter into agreements with local boards of education, upon approval by the Governor, for the establishment and operation of extension units of the community college system, provided that the Governor may consult with the Advisory Budget Commission before giving approval. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this Chapter for other institutions, subject to available funds.

On petition of a board of education of the school administrative unit in which an extension unit is proposed to be established, the State Board of Community Colleges may approve the use by the proposed institution of existing public school facilities, if the State Board finds:

(1) That an adequate portion of these facilities can be devoted to the exclusive use of the institution, and

(2) That use of these facilities will be consistent with sound educational considerations.

(f) A community college may not offer a new program without the approval of the State Board of Community Colleges except that approval shall not be required if the tuition for the program will fully cover the cost of the program. If at any time tuition fails to fully cover the cost of a program that falls under the exception, the program shall be discontinued unless approved by the State Board of Community Colleges. If a proposed new program would serve more than one community college, the State Board of Community Colleges shall perform a feasibility study prior to acting on the proposal.

The State Board of Community Colleges shall report on an annual basis to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Joint Legislative Commission on Governmental Operations, and the Advisory Budget Commission on all new programs it approved during the year. The report shall include the specific reasons for which each program was approved.

(g) Funds appropriated to the Department of Community Colleges as operating expenses for allocation to the institutions comprising the North Carolina Community College System shall not be used to support recreation extension courses. The financing of these courses by any institution shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students (FTE) for use in budget-funding formulas at the State level.

(h) Whenever a community college offers real estate continuing education courses pursuant to G.S. 93A-4A, the courses shall be offered on a self-supporting basis.

(i) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on March 1 and September 1 of each year on expenditures for the New and Expanding Industry Program each fiscal year. The report shall include, for each company or individual that receives funds for New and Expanding Industry:

(1) The total amount of funds received by the company or individual;
(2) The amount of funds per trainee received by the company or individual;
(3) The amount of funds received per trainee by the community college training the trainee;
(4) The number of trainees trained by company and by community college; and
(5) The number of years the companies or individuals have been funded.

The September 1, 1996, report shall include this information for the prior three fiscal years.

(j) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43; 1983, c. 717, s. 28; 1983 (Reg. Sess., 1984), c. 1034, ss. 45, 46; 1985, c. 479, s. 67; 1985 (Reg. Sess., 1986), c. 955, s. 22; 1987, c. 282, s. 34; c. 564, ss. 8-10, 12, 33; c. 763, s. 1; 1989, c. 162; 1989 (Reg. Sess., 1990), c. 915, s. 1; c. 1066, s. 91; 1991, c. 689, ss. 44, 48; 1991 (Reg. Sess., 1992), c. 880, s. 4; 1993, c. 170, s. 2; c. 321, ss. 111, 117(e); c. 492, s. 2; 1993 (Reg. Sess., 1994), c. 769, s. 18.4; 1995, c. 288, s. 2; c. 324, s. 16.4; 1996, 2nd Ex. Sess., c. 18, ss. 17.4, 17.7(a).)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1991 (Reg. Sess., 1992), c. 880, which amended this section, in s. 6, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 677, s. 14, and by Session Laws 1995, c. 507, s. 17.6(b), provides: "The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1996."

Session Laws 1995 (Reg. Sess., 1996), c. 625, provides that the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan to provide students with information regarding the transfer of credits between community colleges and between community colleges and the constituent institutions of The University of North Carolina, shall develop a timetable for development of guidelines and report to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997, and shall review policies and make any necessary changes by September 1, 1997.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 17.7(b), provides: "(b) Of the funds appropriated for the 1996-97 fiscal year to the Department of Community Colleges, two hundred thousand dollars ($200,000) shall be used for start-up costs at the newest Hosiery Technology Center Program created in 1995-96 and two hundred thousand dollars ($200,000) shall be used for start-up costs for new community college programs serving the recently constructed Pasquotank Correctional Institution."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 288, s. 2, effective September 1, 1995, added the last sentence of subsection (a).

Session Laws 1995, c. 324, s. 16.4, effective July 1, 1995, added "except for a literacy class or program" at the end of the last sentence of the first paragraph of subsection (c1).

Session Laws 1996, Second Extra Session, c. 18, ss. 17.4 and 17.7, added subsections (i) and (j).

ARTICLE 2.

Local Administration.

§ 115D-12. Each institution to have board of trustees; selection of trustees.

(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three — four trustees, appointed by the Governor.

Group Four — the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(b1) No person who has been employed full time by the community college within the prior 5 years and no spouse or child of a person currently employed full time by the community college shall serve on the board of trustees of that college.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23; 1977, c. 823, ss. 104; 1979, c. 462, s. 2; 1985, c. 757, s. 147; 1987, c. 564, ss. 10, 12; 1987 (Reg. Sess., 1988), c. 1037, s. 111; 1991, c. 283, s. 1; 1995, c. 470, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 24, 1995, and applicable to terms beginning on or after that date, in subsection (a), in the last sentence of the paragraph headed "Group One", added "a member of the board of education or", and added the next to last sentence of the paragraph headed "Group Two"; and added subsection (b1).

§ 115D-14. Board of trustees a body corporate; corporate name and powers; title to property.

Local Modification. — Gaston, Greene, and Sampson: 1995, c. 399, s. 3.

§ 115D-15. Sale, exchange or lease of property.

Local Modification. — Chatham: 1995, c. 80, s. 2; Gaston: 1995, c. 399, ss. 1, 3; Greene: 1995, c. 399, ss. 1, 3; Halifax: 1995 (Reg. Sess., 1996), c. 706; Montgomery: 1995, c. 154, s. 3; Nash: 1995 (Reg. Sess., 1996), c. 706; Sampson: 1995, c. 399, ss. 1, 3; Wilson: 1995 (Reg. Sess., 1996), c. 706.

For additional local modifications to this section, see the main pamphlet.

§ 115D-19. Removal of trustees.

(a) Should the State Board of Community Colleges have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the State Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at that meeting a representative of the State Board of Community Colleges may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two-thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it.

(b) A board of trustees may declare vacant the office of a member who does not attend three consecutive, scheduled meetings without justifiable excuse. A board of trustees may also declare vacant the office of a member who, without justifiable excuse, does not participate within six months of appointment in a trustee orientation and education session sponsored by the North Carolina Association of Community College Trustees. The board of trustees shall notify the appropriate appointing authority of any vacancy. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1989, c. 521, s. 2; 1995, c. 470, s. 2.)

Effect of Amendments. — The 1995 amendment, effective July 24, 1995, and applicable to terms beginning after June 30, 1995, added the second sentence of subsection (b).

§ 115D-20. (See Editor's note) Powers and duties of trustees.

Local Modification. — Gaston, Greene, and Sampson: 1995, c. 399, s. 3.

CASE NOTES

Employment Duties. — This section, making one of the duties of the Board of Trustees to elect a president of a college and to elect or employ all other personnel of the institution, essentially makes the Board of Trustees the de facto employers of community college president and other employees, and the board should be held to the same standards as other employers for the tortious acts of its employees. Caldwell v. Linker, 901 F. Supp. 1010 (M.D.N.C. 1995).

ARTICLE 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

(1) Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State. Notwithstanding the provisions of this subdivision, G.S. 116-53(b), or G.S. 143-31.4, appropriations by the State of North Carolina for capital or permanent improvements for community colleges may be matched with any prior expenditure of non-State funds for capital construction or land acquisition not already used for matching purposes.

(2) Current Operating Expenses:
  a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.
  b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.
  c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.

(3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved

under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions.

(c) State funds appropriated to the State Board of Community Colleges for equipment and library books shall revert to the General Fund 12 months after the close of the fiscal year for which they were appropriated. Encumbered balances outstanding at the end of each period shall be handled in accordance with existing State budget policies. The Department shall identify to the Office of State Budget and Management the funds that revert at the end of the 12 months after the close of the fiscal year. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2; 1985, c. 757, s. 146; 1987, c. 564, ss. 9, 12; 1995, c. 324, s. 16.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1993, c. 542, as amended by Session Laws 1995, c. 515, provides for the issuance of general obligation bonds of the State, to be allocated, inter alia, to provide grants to individual community colleges to finance the costs of community college capital improvements for community colleges in this State.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (c).

§ 115D-32. Local financial support of institutions.

(a) The tax-levying authority of each institution shall be responsible for providing, in accordance with the provisions of G.S. 115D-33 or 115D-34, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

(1) Plant Fund: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase or rental of all equipment necessary for the maintenance of buildings and grounds and operation of plants; and purchase of all furniture and equipment not provided for administrative and instructional purposes.

(2) Current expenses:

a. Plant operation and maintenance:

1. Salaries of janitors, maids, watchmen, maintenance and repair employees.

2. Cost of fuel, water, power, and telephones.
3. Cost of janitorial supplies and materials.
4. Cost of operation of motor vehicles.
5. Cost of maintenance and repairs of buildings and grounds.
6. Maintenance and replacement of furniture and equipment provided from local funds.
7. Maintenance of plant heating, electrical, and plumbing equipment.
8. Maintenance of all other equipment, including motor vehicles, provided by local funds.
9. Rental of land and buildings.
10. Any other expenses necessary for plant operation and maintenance.

b. Support services:

1. Cost of insurance for buildings, contents, motor vehicles, workers' compensation for institutional employees paid from local funds, and other necessary insurance.
2. Any tort claims awarded against the institution due to the negligence of the institutional employees.
3. Cost of bonding institutional employees for the protection of local funds and property.
4. Cost of elections held in accordance with G.S. 115D-33 and 115D-35.
5. Legal fees incurred in connection with local administration and operation of the institution.

(b) The board of trustees of each institution may apply local public funds provided in accordance with G.S. 115D-33(a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a budget is submitted in accordance with G.S. 115D-54.

(c) The board of trustees of each institution may apply institutional funds provided in accordance with G.S. 115D-54(b)(3) for such purposes as may be determined by the board of trustees of the institution.

(d) The counties that agree to have satellite campuses of community colleges located in them accept the maintenance and utility costs of these satellite campuses. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 3; 1985, c. 757, s. 148(a); 1987, c. 564, s. 11; 1995, c. 509, s. 64.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "G.S. 115D-54(b)(3)" for "G.S. 115D-54(3)" in subsection (c).

§ 115D-39. Student tuition and fees.

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition rate; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the military, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes as defined in G.S. 116-143.1(a)(2). (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 58; 1989, c. 752, s. 85; 1991 (Reg. Sess., 1992), c. 1044, s. 25(a); 1993, c. 561, s. 50(a); 1996, 2nd Ex. Sess., c. 18, s. 17.1(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 17.1(b), provides that the State Board of Community Colleges shall adopt rules to implement Session Laws 1996, Second Extra Session, c. 18, s. 17.1, effective for the fall 1996 quarter.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, added the language beginning "provided further, however" and ending "into the State" in the first sentence of the third paragraph.

Chapter 115E.

Higher Educational Facilities Finance Act.

Sec.
115E-4. Educational facilities finance agency.
115E-21. Tax exemption.

§ 115E-4. Educational facilities finance agency.

(a) There is hereby created a body politic and corporate to be known as "North Carolina Educational Facilities Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The agency shall be governed by a board of directors composed of seven members. Two of the members of said board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House shall appoint one director in accordance with G.S. 120-121, and the Governor shall appoint three of the directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor, and each director shall continue in office until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made such appointment. Any member of the board of directors shall be eligible for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointive member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier or either two years or the date of expiration of their then current terms as members of the board of directors of the agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and such other officers as it shall deem necessary or advisable, which officers need not be members of the board of directors.

(b) No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(d) Four members of the board of directors of the agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board of directors duly called and held shall be necessary for any action taken by the board of directors of the agency; provided, however, that the board of directors may appoint an executive committee to act on behalf of said board during the period between regular meetings of said board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina Educational Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b). (1985 (Reg. Sess., 1986), c. 794, s. 4; 1995, c. 490, s. 17(a).)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment, in the fifth sentence of subsection (a), twice added "General Assembly upon the recommendation of the", added "Pro Tempore", and twice added "in accordance with G.S. 120-121". For the applicability of this amendment, see editor's note.

§ 115E-21. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any project undertaken by the agency prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project.

Any bonds or notes issued by the agency under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1985 (Reg. Sess., 1986), c. 794, s. 21; 1995, c. 46, s. 5.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the second paragraph, in the first sentence, deleted "their transfer and the income therefrom (including any profit made on the sale thereof" following "Chapter", and added "income taxes on the gain from the transfer of the bonds and notes, and franchise taxes" at the end, and added the present second sentence.

Chapter 116.

Higher Education.

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Article 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

(a) In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions. (1971, c. 1244, s. 1; 1995, c. 507, s. 15.17.)

Editor's Note. —
Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added the subsection (a) designation, and added subsection (b).

§ 116-2. Definitions.

As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.

(2) "Board of trustees" means the board of trustees of a constituent institution.

(3) "Chancellor" means the chancellor of a constituent institution.

(4) "Constituent institution" or "institution" means one of the 16 public senior institutions, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University, and Winston-Salem State University.

(5) "President" means the President of the University of North Carolina.

(6) "Vending facilities" has the same meaning as it does in G.S. 143-12.1. (1971, c. 1244, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 171; 1995 (Reg. Sess., 1996), c. 603, s. 1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University" in subdivision (4).

Part 2. Organization, Governance and Property of the University.

§ 116-4. Constituent institutions of the University of North Carolina.

On July 1, 1972, the University of North Carolina shall be composed of the following institutions: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 2.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University".

§ 116-5. Initial membership of Board of Governors.

(a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

(1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.

(2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", and Winston-Salem State University.

(3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.

(4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose terms shall expire on June 30, 1973.

(b) Of the 16 persons elected by the Board of Trustees of the University of North Carolina, four shall serve a term ending on June

30, 1973, four shall serve a term ending on June 30, 1975, four shall serve a term ending on June 30, 1977, and four shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 16 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the 11 persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(1), three shall serve a term ending in 1973, three shall serve a term ending on June 30, 1975, three shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 11 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the five persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(2), the member elected from the Board of Trustees of the North Carolina School of the Arts shall serve a term ending on June 30, 1973, and of the remaining members, one shall serve a term ending on June 30, 1975, one shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those four persons, excluding the member from the North Carolina School of the Arts, shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1975, 1977, and 1979 respectively.

(c) Any vacancy occurring in the membership of the Board of Governors between July 1, 1972, and June 30, 1973, shall be filled by appointment of the Governor, and the person appointed shall serve for the remainder of the unexpired term.

(d) The Governor shall serve ex officio as a member and as chairman of the Board of Governors until December 31, 1972. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University" in subdivision (a)(2).

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

(1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to

the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Department of Community Colleges and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, the Advisory Budget Commission and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.

(3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative. The Board shall review the productivity of academic degree programs every two years, using criteria specifically developed to determine program productivity.

(4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Session Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

(5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor,

appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(5a) [Expired.]

(5b) The Board of Governors may by resolution provide that, until July 1, 1998, every president, vice-president, and other administrative officer of the University whom it elects and who is not subject to Chapter 126 of the General Statutes, and every chancellor, vice-chancellor, senior academic officer, senior administrative officer, and faculty member who serves a constituent institution or agency of the University and who is not subject to Chapter 126 of the General Statutes, shall retire on July 1 coincident with or next following his seventieth birthday, unless continued in service on a year-to-year basis in accordance with regulations adopted by the Board of Governors.

(6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

(7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

(8) The Board shall set enrollment levels of the constituent institutions.

(9)a. The Board of Governors shall develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas. The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget.

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary increases for employees exempt from the State Personnel Act shall be appropriated to the Board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum for allocation to the institutions. The Board shall make allocations among the institutions in accordance with the Board's schedule of priorities and any specifications in the Current Operations Appropriations Act. When both the Board and the Director of the Budget deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list. Provided, nothing herein shall be construed to allow the General Assembly, except as to capital improvements, to refer to particular constituent institutions in any specifications as to priorities in the third category. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.

c. The Director of the Budget may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over or under enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions. Prior to taking any action under this paragraph, the Director of the Budget may consult with the Advisory Budget Commission.

d. Repealed by Session Laws 1987, c. 795, s. 27, effective July 1, 1987.

(10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Department of Community Colleges and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(10a) The Board of Governors, the State Board of Community Colleges, and the State Board of Education, in consultation with private higher education institutions defined in G.S. 116-22(1), shall plan a system to provide an exchange of information among the public schools and institutions of higher education to be implemented no later than June 30, 1995. As used in this section, “institutions of higher education” shall mean public higher education institutions defined in G.S. 116-143.1(a)(3), and those private higher education institutions defined in G.S. 116-22(1) that choose to participate in the information exchange. The information shall include:

a. The number of high school graduates who apply to, are admitted to, and enroll in institutions of higher education;

b. College performance of high school graduates for the year immediately following high school graduation including each student’s: need for remedial coursework at the institution of higher education that the student attends; performance in standard freshmen courses; and continued enrollment in a subsequent year in the same or another institution of higher education in the State;

c. The progress of students from one institution of higher education to another; and

d. Consistent and uniform public school course information including course code, name, and description.

The Department of Public Instruction shall generate and the local school administrative units shall use standardized transcripts in an automated format for applicants to higher education institutions. The standardized transcript shall include grade point average, class rank, end-of-course test scores, and uniform course information including course code, name, units earned toward graduation, and credits earned for admission from an institution of higher education. The grade point average and class rank shall be calculated by a standard method to be devised by the institutions of higher education.

The Board of Governors shall coordinate a joint progress report on the implementation of the system to provide an exchange of information among the public and independent colleges and universities, the community colleges, and the public schools. The report shall be made to the Joint Legislative Education Oversight Committee no later than February 15, 1993, and annually thereafter.

(10b) The Board of Governors of The University of North Carolina shall report to each community college and to the State Board of Community Colleges on the academic performance of that community college's transfer students.

(11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State.

(12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, the Advisory Budget Commission and the boards of trustees of the institutions.

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

(14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1; 1979, c. 862, s. 8; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983, c. 163; c. 717, ss. 29, 30; c. 761, s. 113; 1983 (Reg. Sess., 1984), c. 1019, s. 2; 1985, c. 757, s. 152; 1985 (Reg. Sess., 1986), c. 955, ss. 23-27; 1987, c. 795, s. 27; 1991 (Reg. Sess., 1992), c. 880, ss. 2, 6; c. 1039, s. 25; 1993, c. 407, s. 2; 1993 (Reg. Sess., 1994), c. 677, s. 14; 1995, c. 288, s. 3.)

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

Editor's Note. —

Session Laws 1995, c. 287, ss. 1-3, effective June 19, 1995, provides for the development, by the Board of Governors of the University of North Carolina and the State Board of Community Colleges, of a plan for the transfer of credits between the institutions of the North Carolina Community College System, and between those institutions and the constituent institutions of The University of North Carolina, the intention of the General Assembly to adopt a plan for the transfer of credits, and the implementation, by the State Board of Community Colleges, of a common course numbering system.

Session Laws 1995 (Reg. Sess., 1996), c. 625, provides that the Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan to provide students with information regarding the transfer of credits between community colleges and between community colleges and the constituent institutions of The University of North Carolina, shall develop a timetable for development of guidelines and report to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997, and shall review policies and make any necessary changes by September 1, 1997.

Effect of Amendments. — The 1995 amendment, effective September 1, 1995, added subdivision (10b).

§ 116-12. Property and obligations.

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the "University of North Carolina at Pembroke", Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1; 1995 (Reg. Sess., 1996), c. 603, s. 4.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 7, provides: "(a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

"(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act."

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke'" following "Pembroke State University" in the first and second sentences.

§ 116-19. Contracts with private institutions to aid North Carolina students.

Editor's Note. — As amended by Session Laws 1996, Second Extra Session, c. 18, s. 16, Session Laws 1995, c. 324, s. 15, and Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 17, Session Laws 1993, c. 321, s. 80 provides:

"(a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to six hundred dollars ($600.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each fiscal year.

"These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in subsection (b) of this section.

"(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, not to exceed one thousand three hundred ($1,300) per academic year, which shall be distributed to the student as hereinafter provided.

"The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

"In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

"In the event there are not sufficient funds to provide each eligible student with a full grant:

"(1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and

"(2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

"Any remaining funds shall revert to the General Fund.

"(c) Expenditures made pursuant to this section shall be used only for secular educational purposes at nonprofit institutions of higher learning. Expenditures made pursuant to this section shall not be used for any student who:

"(1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or

"(2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years.

"(d) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students enrolled in off-campus programs. An 'off-campus program' is any program offered for degree credit away from the institution's main permanent campus.

"The State Education Assistance Authority shall report to the Joint Legislative Commission on Governmental Operations by March 1, 1997, regarding its findings."

§ 116-22. Definitions applicable to §§ 116-19 to 116-22.

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

Part 2A. Fiscal Accountability and Flexibility.

§ 116-30.01. North Carolina Teacher Academy Board of Trustees.

(a) The North Carolina Teacher Academy Board of Trustees shall establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers, which shall be provided through summer programs.

(b) The Board of Governors of The University of North Carolina shall delegate to the Board of Trustees all the powers and duties the Board of Governors considers necessary or appropriate for the effective discharge of the functions of the North Carolina Teacher Academy.

(c) The Board of Trustees shall consist of 20 members appointed as follows:

(1) The Superintendent of Public instruction or the Superintendent's designee;

(2) One member of the State Board of Education appointed by the Chair of the State Board;

(3) One member of the Board of Governors of The University of North Carolina appointed by the Chair of the Board of Governors;
(4) The Director of the North Carolina Center for the Advancement of Teaching;
(5) Two deans of Schools of Education appointed by the President of The University of North Carolina;
(6) Four public school teachers appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;
(7) Four public school teachers appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom teaches in preschool through grade 2, one of whom teaches in grades 3 through 5, one of whom teaches in grades 6 through 8, and one of whom teaches on grades 9 through 12;
(8) Two public school teachers appointed by the Governor;
(9) One superintendent of a local school administrative unit appointed by the Governor;
(10) Two public school principals appointed by the Governor; and
(11) The President of the North Carolina Association of Independent Colleges and Universities, or a designee.

(d) Members appointed prior to September 1, 1995, shall serve until June 30, 1997, except that the terms of members appointed pursuant to subdivisions (6) and (7) of subsection (d) of this section shall expire June 30, 1995. Subsequent appointments shall be for four-year terms, except that two of the members appointed by the 1995 General Assembly pursuant to subdivision (6) of subsection (d) of this section and two of the members appointed by the 1995 General Assembly pursuant to subdivision (7) of subsection (d) of this section shall serve for two-year terms.

Members may serve two consecutive four-year terms.

Legislative appointments shall be made in accordance with G.S. 120-121. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

The Board of Trustees shall elect a new chair every two years from its membership. The chair may serve two consecutive two-year terms as chair.

(e) The chief administrative officer of the Teacher academy shall be a director appointed by the Board of Trustees.

(f) The Board of trustees shall collaborate and coordinate its programming with NCCAT [North Carolina Center for the Advancement of Teaching]. (1995, c. 324, s. 17.9.)

Editor's Note. — Session Laws 1995, c. 324, s. 17.9(a) was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 17.9, provides in part:

"(a) The Task Force on Teacher Staff Development established by Section 141 of Chapter 321 of the 1993 Session Laws, all funds appropriated by the General

Assembly for the Task Force and the Teacher Academy Program, and all resources and personnel provided for the Task Force and the Teacher Academy Program by the Department of Public Instruction are transferred from the Department of Public Instruction to The University of North Carolina. This transfer shall have all of the elements of a Type I transfer, as that term is defined in G.S. 143A-6(a). Where a conflict arises in connection with the transfer, the transfer shall be resolved by the Governor, and the decision of the Governor shall be final.

"The Task Force is renamed the North Carolina Teacher Academy Board of Trustees.

"(b) Subsection (g) of Section 141 of Chapter 321 of the 1993 Session Laws is repealed.

"(h) The Board of Trustees shall report on its summer programs to the Joint Legislative Education Oversight Committee prior to November 1, 1995.

"(j) This section becomes effective September 1, 1995, except that the General Assembly may make appointments pursuant to subsection (d) of this section [subsection (c) above] prior to September 1, 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

§ 116-30.1. Special responsibility constituent institutions.

The Board of Governors of The University of North Carolina, acting on recommendation made by the President of The University of North Carolina after consultation by him with the State Auditor, may designate one or more constituent institutions of The University as special responsibility constituent institutions. That designation shall be based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it. The Board of Governors, on recommendation of the President, shall adopt rules prescribing management staffing standards and internal financial controls and safeguards, including the lack of any significant exceptions or audit findings in the annual financial audit by the State Auditor's Office, that must be met by a constituent institution before it may be designated a special responsibility constituent institution and must be maintained in order for it to retain that designation. These rules shall not be designed to prohibit participation by a constituent institution because of its size. These rules shall establish procedures for the President and his staff to review the annual financial audit reports or any other special or performance audit reports issued by the State Auditors Office for each special responsibility constituent institution. The President shall take immediate action regarding reported weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where such audit exceptions are identified, the President shall notify the Chancellor of the particular special responsibility constituent institution that such exceptions must be resolved to the satisfaction of the State Auditor and the President of The University within a three-month period commencing with the date of receipt of the published financial audit report. If the exceptions are not satisfactorily resolved within a three-month period, the President of The University shall recommend to the

Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of the State Auditor and the President of The University of North Carolina. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.

The rules established under this section shall include review and consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and consultation must take place no less frequently than once each biennium. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1996, 2nd Ex. Sess., c. 18, s. 7.4(k).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in the first paragraph added the fifth sentence through the end of the paragraph, and added the second paragraph.

§ 116-30.2. Appropriations to special responsibility constituent institutions.

All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and G.S. 143-23(a3) and G.S. 120-76(8), each special responsibility constituent institution may expend the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); c. 769, s. 17.6(c); 1996, 2nd Ex. Sess., c. 18, s. 7.4(i).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, inserted "and G.S. 120-76(8)."

§ 116-30.3. Reversions.

(a) Of the General Fund current operations appropriations credit balance remaining at the end of each fiscal year in each budget code of a special responsibility constituent institution, except for the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than two percent (2%) of the General Fund appropriation for that fiscal year may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. Of the General Fund current operations appropriations credit balance remaining in the budget code of the Area Health Education Centers of the University of North Carolina at Chapel Hill, any amount greater than one percent (1%) of the General Fund appropriation for that fiscal year may be carried forward in that budget code to the next fiscal year and may be used for one- time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 ½%) of the General Fund appropriation. The Director of the Budget, under the authority set forth in G.S. 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

(b) An institution shall cease to be a special responsibility constituent institution under the following circumstances:

(1) An institution, other than the Area Health Education Centers of the University of North Carolina, does not revert at least two percent (2%) of its General Fund current operations credit balance remaining in each budget code of that institution, or

(2) The Area Health Education Centers of the University of North Carolina at Chapel Hill does not revert at least one percent (1%) of its General Fund current operations credit balance remaining in its budget code.

However, if the Board of Governors finds that the low reversion rate is due to adverse and unforeseen conditions, the Board may allow the institution to remain a special responsibility constituent institution for one year to come into conformity with this section. The Board may make this exception only one time for any special responsibility constituent institution, and shall report these exceptions to the Joint Legislative Commission on Governmental Operations. (1991, c. 689, s. 206.2(a); 1993 (Reg. Sess., 1994), c. 591, s. 10(a); 1995, c. 507, s. 15.16.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 16.2, provides that, notwithstanding G.S. 116-30.3, the five constituent institutions cited in the study of equity of funding among the constituent institutions of the University of North Carolina as receiving lower than average pupil funding shall not be required to revert two percent of their General Fund appropriations for the 1996-97 school year.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, rewrote this section.

Part 3. Constituent Institutions.

§ 116-34. Duties of chancellor of institution.

CASE NOTES

Quoted in Simonel v. North Carolina Sch. of Arts, 119 N.C. App. 772, 460 S.E.2d 194 (1995).

§ 116-36.4. Vending facilities.

Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require concerning the use of net proceeds from operations of vending facilities for the previous fiscal year under G.S. 116-36.1. Net proceeds may be used only as authorized by the Board of Governors, but this section does not authorize expenditures for purposes not otherwise authorized by law. (1983 (Reg. Sess., 1984), c. 1034, s. 172; 1987, c. 738, s. 233(b); 1993, c. 406, s. 1; 1995, c. 507, s. 15.7.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "Each institution shall provide to the director of the Budget and the State Auditor such information as they may from time to time require" for "The Board of Governors shall, not later than October 1, of each year, review an itemized annual report in a format to be determined by the Office of State Budget and Management", and deleted the last three sentences, regarding how the report should be itemized, reports from the UNC hospitals, and the providing of a copy of the report to the Fiscal Research Division of the Legislative Services Office.

§ 116-36.6. East Carolina University School of Medicine; Medicare receipts.

The East Carolina University School of Medicine shall request, on a regular basis consistent with the State's cash management plan, funds earned by the School from Medicare reimbursements for education costs. Upon receipt, these funds shall be allocated as follows:

(1) The portion of the Medicare reimbursement generated through the effort and expense of the School of Medicine's Medical Faculty Practice Plan shall be transferred to the

appropriate Medical Faculty Practice Plan account within the School of Medicine. The Medical Faculty Practice Plan shall assume responsibility for any of these funds that subsequently must be refunded due to final audit settlements.

(2) The funds from this source budgeted by the General Assembly as part of the School of Medicine's General Fund budget code shall be credited to that code as a receipt.

(3) The remainder of the funds shall be transferred to a special fund account on deposit with the State Treasurer. This special fund account shall be used for any necessary repayment of Medicare funds due to final audit settlements for funds allocated under subdivision (2) of this subsection. When the amount of these reimbursement funds has been finalized by audit for each year, those funds remaining in the special fund shall be available for specific capital improvement projects for the East Carolina University School of Medicine. Requests by East Carolina University for use of these funds shall be made to the Board of Governors of The University of North Carolina. Approval of projects by the Board of Governors shall be reported to the Joint Legislative Commission on Governmental Operations, and the reports shall include projected costs and sources of funds for operation of the approved projects. (1995, c. 507, s. 15.4.)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13 made this section effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 116-37.1. Center for public television.

(a) The Board of Governors is hereby authorized and directed to establish "the University of North Carolina Center for Public Television" (hereinafter called "the Center"). It shall be the functions of the Center, through itself or agencies with whom it may contract, to provide research, development, and production of noncommercial educational television programming and program materials; to provide distribution of noncommercial television programming through the broadcast facilities licensed to the University of North Carolina; and otherwise to enhance the uses of television for public purposes.

(b) The Center shall have a board of trustees, to be named "the Board of Trustees of the University of North Carolina Center for Public Television" (hereinafter called "the Board of Trustees"). The Board of Governors is hereby authorized and directed to establish the Board of Trustees of the Center and to delegate to the Board of Trustees such powers and duties as the Board of Governors deems necessary or appropriate for the effective discharge of the functions of the Center; provided, that the Board of Governors shall not be deemed by the provisions of this section to have the authority to delegate any responsibility it may have as licensee of the broadcast facilities of the University of North Carolina.

(1) The Board of Trustees of the University of North Carolina Center for Public Television shall be composed of the

following membership: 11 persons appointed by the Board of Governors; four persons appointed by the Governor; two members appointed by the General Assembly, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121; and ex officio, the Secretary of the Department of Cultural Resources, the Secretary of the Department of Human Resources, the Superintendent of Public Instruction, the President of the Community College System, and the President of the University of North Carolina. In making initial appointments to the Board of Trustees, the Board of Governors shall designate six persons for two-year terms and five persons for four-year terms, and the Governor shall designate two persons for two-year terms and two persons for four-year terms. The initial members appointed to the Board of Trustees by the General Assembly shall serve for terms expiring June 30, 1983, and notwithstanding anything else in this section, their successors shall be appointed in 1983 and biennially thereafter for two-year terms. Thereafter, the term of office of appointed members of the Board of Trustees of the Center shall be four years. In making appointments to the Board of Trustees the appointing authorities shall give consideration to promoting diversity among the membership, to the end that, in meeting the responsibilities delegated to it, the Board of Trustees will reflect and be responsive to the diverse needs, interests, and concerns of the citizens of North Carolina.

(2) No person shall be appointed to the Board of Trustees who is an employee of the State or of any constituent institution; a public officer of the State as defined in G.S. 147-1, 147-2, and 147-3(c); a member of the Board of Governors; a trustee of a constituent institution; or the spouse of any of the foregoing. Any appointed member of the Board of Trustees who after appointment becomes any of the foregoing shall be deemed to have resigned from the Board of Trustees.

(3) Each ex officio member of the Board of Trustees shall personally serve on the Board of Trustees but may designate in writing a proxy for specified meetings which the ex officio member finds he or she is unable reasonably to attend.

(4) Each appointive member of the Board of Trustees shall personally serve on the Board of Trustees without benefit of proxy. Any appointive member who fails, for any reason other than ill health or service in the interest of the State or the nation, to attend three consecutive regular meetings of the Board of Trustees, shall be deemed to have resigned from the Board of Trustees.

(5) Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies occurring during a term among the appointive membership of the Board of Trustees shall be filled for the remainder of the unexpired term by appointment of the original appointing authority for the vacant seat. The principal officer of the Board of Trustees shall promptly notify the Secretary of the University of North Carolina of

the vacancy and the Secretary shall give written notice of the vacancy to the appropriate appointing authority.

(c) The chief administrative officer of the Center shall be a Director, who shall be elected by the Board of Governors upon recommendation of the President and who shall be responsible to the President. The Center shall have such other staff as the Board of Governors may authorize. (1979, c. 649, s. 1; 1981 (Reg. Sess., 1982), c. 1191, ss. 54, 55; 1987, c. 564, § 33; 1995, c. 490, s. 61.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subdivision (b)(1). For the applicability of this amendment, see editor's note.

Part 4A. Distinguished Professors Endowment Trust Fund.

§ 116-41.18. Distinguished Professors Endowment Trust Fund; selection of Distinguished Professors.

(a) Each constituent institution that receives, through private gifts and an allocation by the Board of Governors, funds for the purpose shall, under procedures established by rules of the Board of Governors and the board of trustees of the constituent institution, select a holder of the Distinguished Professorship. Once given, that designation shall be retained by the distinguished professor as long as he remains in the full-time service of the institution. When a distinguished professorship becomes vacant, it shall remain assigned to the institution and another distinguished professor shall be selected under procedures established by rules of the Board of Governors and the board of trustees of the constituent institution.

(a1) No rule shall prevent the constituent institutions of The University of North Carolina from selecting holders of Distinguished Professorships from among existing faculty members or newly hired faculty members.

(b) The Board of Governors of The University of North Carolina shall promulgate rules to implement this section.

(c) There is appropriated from the General Fund to the Board of Governors of The University of North Carolina the sum of two million dollars ($2,000,000) for fiscal year 1985-86, and the sum of two million dollars ($2,000,000) for fiscal year 1986-87, to implement this section. (1985, c. 757, s. 202; 1991 (Reg. Sess., 1992), c. 1030, s. 31; 1995, c. 507, s. 15.12.)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (a1).

Part 7. Fire Safety.

§ 116-44.6. Definitions.

Unless the context clearly requires another meaning, the following definitions apply in this Part:

(1) Fraternity or sorority. — A social, professional, or educational incorporated organization that, by official recognition, is affiliated or identified with a public or nonpublic institution of higher education in this State and which maintains a living facility that provides accommodations for five or more students enrolled at the recognition-granting institution of higher education.

(2) Fund. — The Fire Safety Loan Fund authorized by this Part.

(3) Living facility. — A sleeping facility capable of overnight accommodation and other capabilities which support continuous occupancy.

(4) Residence hall. — A living facility maintained by a public or nonpublic institution of higher education in North Carolina or by the North Carolina School of Science and Mathematics for use by enrolled students.

(5) Supplemental fire safety protection system. — A water system capability which is sized to accommodate the added water supply pressure and volume required for building fire protection.

(6) Water system. —

a. A city, county, or sanitary district; or

b. A water and sewer authority, a metropolitan water district, or county water and sewer district, established pursuant to Chapter 162A of the General Statutes. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 16.5(b) and (c), provide: "(b) Of the funds allocated by this act to the Board of Governors of The University of North Carolina from the Reserve for Repairs and Renovations, the sum of one million two hundred sixty-three thousand eight hundred three dollars ($1,263,803) for the 1996-97 fiscal year shall be used to add central fire alarm and warning systems to residence halls at the constituent institutions of The University and at the North Carolina School of Science and Mathematics that are not currently so equipped. The central alarm and warning systems to be installed shall be interconnected with a supervisory campuswide system of reporting into a station that is continuously monitored.

"(c) Of the funds appropriated to the Office of the State Treasurer, the sum of one million dollars ($1,000,000) for the 1996-97 fiscal year shall be used for the purpose of establishing the Fire Safety Loan Fund for installing fire safety equipment and systems in fraternity and sorority housing at public and nonpublic institutions of higher education located in North Carolina as authorized by G.S. 116-44.8."

Session Laws 1996, Second Extra Session, c. 18, s. 16.5(d), made this Part effective upon ratification. The Act was ratified August 3, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§ 116-44.7. Exemption from certain fees and charges.

No water system serving a residence hall or fraternity or sorority housing shall levy or collect any water-meter fee, water-hydrant fee, tap fee, or similar service fee on a residence hall or fraternity or sorority house with respect to supporting a supplemental fire safety protection system in excess of the actual cost to the water system to support the fire safety protection system. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

§ 116-44.8. Fire Safety Loan Fund.

(a) There is established the Fire Safety Loan Fund. The Fund shall be a revolving loan fund for installing fire safety equipment and systems in fraternity and sorority housing.

(b) The Fund shall be administered by the Office of the State Treasurer, and that office may establish the policies and procedures that it deems appropriate for the operation of the Fund. The Office of the State Treasurer may enlist the assistance of other State departments or entities which have expertise that would be useful in administering the Fund, and those State departments or entities shall provide the assistance requested.

(c) The Fund shall be operated on a revolving basis with proceeds from the repayment of prior loans being made available for subsequent loans.

(d) Loans from the Fund shall be secured by a first or second mortgage or other pledge. Loans shall be made for a period not to exceed 10 years. Interest shall not be charged on loans from the Fund. (1996, 2nd Ex. Sess., c. 18, s. 16.5(a).)

§ 116-44.9: Reserved for future codification purposes.

Article 5A.

Center for Advancement of Teaching.

§ 116-74.7. Composition of board of trustees; terms; officers.

(a) The NCCAT Board of Trustees shall be composed of the following membership:

(1) Three ex officio members: the President of The University of North Carolina, the State Superintendent of Public Instruction, and the Chancellor of Western Carolina University;

(2) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate;

(3) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and

(4) Eight members appointed by the Board of Governors, one from each of the eight educational regions.

The appointing authorities shall give consideration to assuring, through Board membership, the statewide mission of NCCAT.

(b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members may serve two consecutive four-year terms. The Board shall elect a new chairman every two years from its membership. The Chairman may serve two consecutive two-year terms as chairman.

The chief administrative officer of NCCAT shall be a director, who shall be appointed by the NCCAT Board of Trustees. (1985, c. 479, s. 74; 1995, c. 490, s. 2.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (a)(2). For the applicability of this amendment, see Editor's note.

ARTICLE 5B.

School Administrator Training Programs.

§ 116-74.21. Establishment of a competitive proposal process for school administrator programs.

(a) The Board of Governors shall develop and implement a competitive proposal process and criteria for assessing proposals to establish school administrator training programs within the constituent institutions of The University of North Carolina. To facilitate the development of the programs, program criteria, and the proposal process, the Board of Governors may convene a panel of national school administrator program experts and other professional training program experts to assist it in designing the program, the proposal process, and criteria for assessing the proposals.

(b) No more than eight school administrator programs shall be established under the competitive proposal program. In selecting campus sites, the Board of Governors shall be sensitive to the racial, cultural, and geographic diversity of the State. Special priority shall be given to the following factors: (i) the historical background of the institutions in training educators; (ii) the ability of the sites to serve the geographic regions of the State, such as, the far west, the west, the triad, the piedmont, and the east; and, (iii) whether the type of roads and terrain in a region make commuting difficult. A school administrator program may provide for instruction at one or more campus sites.

(c) The Board of Governors shall study the issue of supply and demand of school administrators to determine the number of school administrators to be trained in the programs in each year of each biennium. The Board of Governors shall report the results of this study to the Joint Legislative Education Oversight Committee no later than March 1, 1994, and annually thereafter.

(d) The Board of Governors shall develop a budget for the programs established under subsection (a) of this section that reflects the resources necessary to establish and operate school administrator programs that meet the vision of the report submitted to the 1993 General Assembly by the Educational Leadership Task Force.

(e) The Board of Governors shall report annually on the implementation of the act no later than December 1 of each year. (1993, c. 199, s. 1; 1993 (Reg. Sess., 1994), c. 677, s. 13; 1995, c. 507, s. 27.2(a).)

Editor's Note. —
Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 27.2(b), provides: "The Board of Governors of The University of North Carolina shall continue the Master of School Administrators program at Appalachian State University as one of the eight school administrator programs established pursuant to G.S. 116-74.21."

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "eight" for "seven" in the first sentence of subsection (b).

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

Editor's Note. —
Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 15.15, provides that the Board of Trustees of a constituent institution of The University of North Carolina designated as a Research University I campus, or which has a professional school or masters degree in Business Administration, may increase tuition at that institution, notwithstanding G.S. 116-143, and provides for the allocation of revenues derived from the increase.

§ 116-143.1. Provisions for determining resident status for tuition purposes.

CASE NOTES

Legal Residence of Parents Not Prima Facie Evidence of Residence. — Although university student's parents were domiciled outside North Carolina, the legal residence of her parents was not prima facie evidence of her legal residence since she had lived in this state five consecutive years prior to enrolling at the university. Fain v. State Residence Comm., 117 N.C. App. 541, 451 S.E.2d 663, aff'd, 342 N.C. 402, 464 S.E.2d 43 (1995).

§ 116-143.3. Tuition of personnel in the armed services.

Cross References. — For provisions regarding the disbursement of funds appropriated to the Board of Governors of The University of North Carolina for aid to private colleges and grants to students by Session Laws 1995, c. 324, see the Editor's Note under G.S. 116-19.

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-183. Acceptance of grants; exemption from taxation.

The Board is hereby authorized, subject to the approval of the Director of the Budget, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under this Article are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1957, c. 1131, s. 9; 1983, c. 577, s. 6; 1995, c. 46, s. 6.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the second sentence deleted "the provisions of" following "issued under", and substituted "are exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes" for "and the income therefrom shall at all times be free from taxation within the State", and added the third sentence.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-196. Exemption from taxation; bonds eligible for investment or deposit.

Any bonds issued under this Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1963, c. 847, s. 10; 1995, c. 46, s. 7.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the first sentence deleted "including any of such bonds constituting a part of the surplus of any bank, trust company, or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any)" following "Article" and added "excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes" to the end; and added the second sentence.

ARTICLE 21B.

Centennial Campus Financing Act.

§ 116-198.39. Bonds are exempt from taxation.

Any bonds issued under this Article shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency, or other instrumentality of the State, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1987, c. 336, s. 1; 1995, c. 46, s. 8.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the first sentence deleted "including any of such bonds constituting a part of the surplus of any bank, trust company, or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any)" following "Article" and added "excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes" to the end; and added the second sentence.

ARTICLE 22.

Visiting Speakers at State-Supported Institutions.

§§ 116-199, 116-200: Repealed by Session Laws 1995, c. 379, s. 17, effective July 6, 1995.

ARTICLE 23.

State Education Assistance Authority.

§ 116-209.13. Tax exemption.

The exercise of the powers granted by this Article in all respects will be for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this Article or upon the income therefrom, and the bonds issued under the provisions of this Article shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. (1967, c. 1177; 1995, c. 46, s. 9.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the first sentence deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following the third occurance of "Article", and added "income taxes on the gain from the transfer of the bonds, and franchise taxes" to the end, and added the last sentence.

§ 116-209.25. Parental Savings Trust Fund.

(a) Policy. — The General Assembly of North Carolina hereby finds and declares that encouraging parents and other interested parties to save for the postsecondary education expenses of eligible students is fully consistent with and furthers the long-established policy of the State to encourage, promote, and assist education as more fully set forth in G.S. 116-201(a).

(b) Parental Savings Trust Fund. — There is established a parental savings trust fund to be administered by the State Education Assistance Authority to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students.

(c) Contributions to the Trust Fund. — The Authority is authorized to accept, hold, and disburse contributions, and interest earned on such contributions, from qualified parents and other interested parties in the Parental Savings Trust Fund. The contributions to the Parental Savings Trust Fund shall be held by the Authority in a separate institutional trust fund and, as such, contributions to the trust fund shall be invested by the State Treasurer as authorized in G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. The contributions to the Parental Savings Trust Fund shall not be considered State moneys, assets of the State, or State revenue for any purpose.

(d) Administration of the Trust Fund. — The Authority is authorized to develop and perform all functions necessary and desirable to administer the Parental Savings Trust Fund and to provide such other services as the Authority shall deem necessary to facilitate participation in the Parental Savings Trust Fund.

(e) Loan Program. — The Authority is authorized to develop and administer a loan program in conjunction with the Parental Savings Trust Fund to provide loan assistance to qualified parents and interested parties in order to facilitate the postsecondary education of eligible students. All funds appropriated to, or otherwise received by the Authority for loans under this section, all funds received as repayment of such loans, and all interest earned on these funds shall be placed in an institutional trust fund. This institutional trust fund may be used only for loans made to qualified parents and interested parties who contributed to the Parental Savings Trust Fund and administrative costs associated with the recovery of funds advanced under this loan program. (1996, 2nd Ex. Sess., c. 18, s. 16.7.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

ARTICLE 29.

The North Carolina School of Science and Mathematics.

§ 116-233. Board of Trustees; appointment; terms of office.

(a) There shall be a Board of Trustees of the School, which shall consist of 26 members:

(1) Twelve members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district;

(2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina;

(3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief

academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter;

(4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter;

(5) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121;

(6) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and

(7) Two members appointed by the Governor.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties.

(c) No member of the General Assembly or officer or employee of the State or of the School or of any constituent institution of The University of North Carolina, or the spouse of any such member, officer or employee, shall be eligible to be appointed to the Board of Trustees; and any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, of the School, or of a constituent institution of The University of North Carolina, or whose spouse is elected or appointed to the General Assembly or becomes such an officer or employee, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve four-year terms. Eight of those terms shall expire June 30, 1993, and quadrennially thereafter, and eight of those terms shall expire June 30, 1995, and quadrennially thereafter. Only an ex officio member shall be eligible to serve more than two successive terms. Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233(a)(1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233(a)(5) or (6) shall be filled in accordance with G.S. 120-122. Any vacancy in members appointed under G.S. 116-233(a)(7) shall be filled by the Governor for the remainder of the unexpired term. Reapportionment of congressional districts does not affect the right of any member to complete the term for which the member was appointed.

(e) Of the initial members appointed under G.S. 116-233(a)(5), one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233(a)(6), shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant. (1985, c. 757, s. 206(b); 1991 (Reg. Sess., 1992), c. 879, ss. 1, 2; 1995, c. 490, s. 45; c. 509, s. 65.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — Session Laws 1995, c. 490, s. 45, added "Pro Tempore" in subdivision (a)(5). For the applicability of this amendment, see editor's note.

Session Laws 1995, c. 509, s. 65, effective July 29, 1995, in subsection (e), substituted "G.S. 116-233(a)(5)" for "G.S. 116-233(5)", "G.S. 116-233(a)(6)" for "G.S. 116-233(6)", and "G.S. 116-233(a)(7)" for "G.S. 116-233(7)".

§ 116-234. Board of Trustees; meetings; rules of procedure; officers.

(a) The Board of Trustees shall meet at least four times a year and may hold special meetings at any time, at the call of the chairman or upon petition addressed to the chairman by at least four of the members of the Board.

(b) The Board of Trustees shall elect a chairman and a vice-chairman; no ex officio member may hold such an office.

(c) The Board of Trustees shall determine its own rules of procedure and may delegate to such committees as it may create such of its powers as it deems appropriate.

(d) Members of the Board of Trustees, other than ex officio members under G.S. 116-233(a)(3), shall receive such per diem compensation and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions. Ex officio members under G.S. 116-233(a)(3) shall be reimbursed for travel expenses as provided by G.S. 138-6. (1985, c. 757, s. 206(b); 1995, c. 509, s. 66.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "G.S. 116-233(a)(3)" for "G.S. 116-233(3)" twice in subsection (d).

§ 116-235. Board of Trustees; powers and duties.

(a) Academic Program. —

(1) The Board of Trustees shall establish the standard course of study for the School. This course of study shall set forth the subjects to be taught in each grade and the texts and other educational materials on each subject to be used in each grade.

(2) The Board of Trustees shall adopt regulations governing class size, the instructional calendar, the length of the

instructional day, and the number of instructional days in each term.

(b) Students. —

(1) Admission of Students. — The School shall admit students in accordance with criteria, standards, and procedures established by the Board of Trustees. To be eligible to be considered for admission, an applicant must be a legal resident of the State, as defined by G.S.116-143.1(a)(1); eligibility to remain enrolled in the School shall terminate at the end of any school year during which a student becomes a nonresident of the State. The Board of Trustees shall ensure, insofar as possible without jeopardizing admission standards, that an equal number of qualified rising high school juniors is admitted to the program and to the residential summer institutes in science and mathematics from each of North Carolina's congressional districts. In no event shall the differences in the number of rising high school juniors offered admission to the program from each of North Carolina's congressional districts be more than two and one-half percentage points from the average number per district who are offered admission.

(2) School Attendance. — Every parent, guardian, or other person in this State having charge or control of a child who is enrolled in the School and who is less than 16 years of age shall cause such child to attend school continuously for a period equal to the time which the School shall be in session. No person shall encourage, entice, or counsel any child to be unlawfully absent from the School. Any person who aids or abets a student's unlawful absence from the School shall, upon conviction, be guilty of a Class 3 misdemeanor. The Director of the School shall be responsible for implementing such additional policies concerning compulsory attendance as shall be adopted by the Board of Trustees, including regulations concerning lawful and unlawful absences, permissible excuses for temporary absences, maintenance of attendance records, and attendance counseling.

(3) Student Discipline. — Rules of conduct governing students of the School shall be established by the Board of Trustees. The Director, other administrative officers, and all teachers, substitute teachers, voluntary teachers, teacher aides and assistants, and student teachers in the School may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

(c) Personnel. —

(1) Faculty Members. — Members of the faculty of the School shall be exempt from the provisions of the State Personnel Act. The Board of Trustees shall adopt all policies and regulations governing the qualifications, criteria for employment, assignment, health requirements, terms and conditions of employment, compensation and benefits, and the supervision and management of all faculty members of the School, and such system of employment and employment security as the Board of Trustees may deem to be appropriate.

(2) Senior Administrative Officers. — The senior administrative officers of the School shall consist of a Director, as

provided by G.S. 116-236, and such other senior academic and administrative officers as shall be selected and employed by the Board of Trustees. They shall be governed by such policies and regulations and provisions for compensation as the Board of Trustees may adopt, and shall be exempt from the State Personnel Act.

(3) Other Employees. — All other employees of the School shall be subject to the State Personnel Act and to such supplemental policies and regulations, not inconsistent therewith, as may be adopted by the Board of Trustees.

(4) All employees of the School shall be deemed to be employees of the State and shall be covered by all provisions of State law relevant thereto, including Chapter 97, Chapter 135, and Article 31A of Chapter 143 of the General Statutes.

(d) Finances, Property, Obligations. —

(1) The Board of Trustees shall develop, prepare, and present to the Board of Governors a recommended budget for the School, which shall be transmitted by the Board of Governors to the General Assembly.

(2) Subject to all applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Trustees may acquire, hold, convey or otherwise dispose of, and invest or reinvest any and all real and personal property, except that the Board of Trustees may not convey any of the land constituting the campus, except for necessary easements, without the approval of the General Assembly. All power and authority exercised with regard to the acquisition, operation, maintenance, and disposition of real and personal property shall be subject to the provisions of Chapters 143 and 146 of the General Statutes except as provided in G.S. 116-238.

(3) The Board of Trustees is authorized to accept, receive, and use any federal funds, or aids, that may be made available by the federal government which, in the judgment of the Board of Trustees, would be beneficial to the operation of the School.

(4) The Board of Trustees is authorized to establish a permanent endowment fund as provided in G.S. 116-238.

(5) The lands and other property of the School shall be exempt from all kinds of public taxation, except as may be provided for by State law.

(6) The Board of Trustees may establish policies and regulations for the sale of goods and services, not inconsistent with the provisions of Article 11 of Chapter 66 of the General Statutes.

(e) Regulation of Traffic and Parking and Registration of Motor Vehicles. —

(1) Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this subsection:

a. "Board of Trustees" means the Board of Trustees of the North Carolina School of Science and Mathematics.

b. "Campus" means that School property, without regard to location, which is used wholly or partly for the purposes of the North Carolina School of Science and Mathematics.

c. "School property" means property owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Trustees of the North Carolina School of Science and Mathematics.

(2) Except as otherwise provided in this subsection, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structure on School property. Nothing in this subsection modifies any rights of ownership or control of School property, now or hereafter vested in the Board of Trustees or the State of North Carolina.

(3) The Board of Trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the Board of Trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the Board of Trustees. The Board of Trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this section.

(4) The Board of Trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the School, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(5) The Board of Trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the School and members of the general public attending schools, conferences, or meetings at the School, visiting or making use of any School facilities, or attending to official business with the School. The Board of Trustees may issue permits to park in these lots and garages and may charge a fee therefor. The Board of Trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.

(6) The Board of Trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the Board of Trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The Board of Trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(7) The Board of Trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia repre-

senting the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(8) Violation of an ordinance adopted under any portion of this subsection is a Class 3 misdemeanor. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(9) An ordinance adopted under any portion of this subsection may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. The Board of Trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The Board of Trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the School.

(10) An ordinance adopted under any portion of this subsection may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether the School does its own removal and disposal of motor vehicles or contracts with another person to do so, the School shall provide a hearing procedure for the owner. For purposes of this subdivision, the definitions in G.S. 20-219.9 apply.

a. If the School operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

b. If the School operates in such a way that it is responsible for collecting towing fees, it shall:

1. Provide by contract or ordinance for a schedule of reasonable towing fees,
2. Provide a procedure for a prompt fair hearing to contest the towing,
3. Provide for an appeal to district court from that hearing,
4. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
5. If the School chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the School may destroy it.

(11) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the Board of Trustees is prima facie evidence that the vehicle was parked by:

a. The person holding a School parking permit for the vehicle, or

b. If no School parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the School pursuant to subdivision (3), above, or

c. If no School parking permit has been issued for the vehicle and the vehicle is not registered with the School, the person in whose name it is registered with the North Carolina Division of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subdivision (11) applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the Board of Trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(12) The Board of Trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(13) All ordinances adopted under this subsection shall be recorded in the minutes of the Board of Trustees and copies thereof shall be filed in the office of the Secretary of State. The Board of Trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(14) All moneys received pursuant to this subsection shall be placed in a trust account of the School and may be used for any of the following purposes:

a. To defray the cost of administering and enforcing ordinances adopted under this subsection;

b. To develop, maintain, and supervise parking areas and facilities;

c. To fulfill other purposes related to parking, traffic, and transportation on the campus.

(f) Status as a Body Politic and Corporate. — The Board of Trustees of the School is hereby made a body corporate and politic, to be known and distinguished as "The Board of Trustees of the North Carolina School of Science and Mathematics." The Board of Trustees shall be capable in law to sue and be sued and of prosecuting and defending suits for or against the corporation, subject to the provisions of G.S. 114-2 and G.S. 147-17.

(g) The Board of Trustees may adopt such other policies and regulations as it may consider necessary and expedient for the operation and management of the affairs of the School, not inconsistent with the provisions of this Article.

(h) The Board of Trustees shall keep the Board of Governors fully and promptly informed, through the President of The University of North Carolina, concerning activities of the Board of Trustees, including notices of meetings and copies of the minutes of all such meetings. (1985, c. 757, s. 206(b); 1993, c. 539, ss. 896, 897; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 15.1.)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "G.S. 116-143.1(a)(1)" for "G.S. 116-143.1" in subdivision (b)(1), and added the last sentence in subdivision (b)(1).

ARTICLE 30.

[Western] North Carolina Arboretum.

§ 116-243. Board of directors established; appointments.

A board of directors to govern the operation of the Arboretum is established, to be appointed as follows:

(1) Two by the Governor, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;

(2) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;

(3) Two by the General Assembly, in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives, initially, one for a two-year term, and one for a four-year term. Successors shall be appointed for four-year terms;

(4) The President of The University of North Carolina or his designee to serve ex officio;

(5) The chancellors, chief executive officers, or their designees of the following institutions of higher education: North Carolina State University, Western Carolina University, The University of North Carolina at Asheville, Mars Hill College, and Warren Wilson College, to serve ex officio;

(6) The President of Western North Carolina Arboretum, Inc., to serve ex officio;

(7) Six by the Board of Governors of The University of North Carolina, initially, three for one-year terms, and three for three-year terms. Successors shall be appointed for four-year terms. One shall be an active grower of nursery stock, and one other shall represent the State's garden clubs;

(8) The executive director of the Arboretum and the Executive Vice President of Western North Carolina Development Association shall serve ex officio as nonvoting members of the board of directors.

All appointed members may serve two full four-year terms following the initial appointment and then may not be reappointed until they have been absent for at least four years. Members serve until their successors have been appointed. Appointees to fill vacancies serve for the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms begin July 1, 1986.

The chairman of the board of directors shall be elected biennially by majority vote of the directors.

The executive director of the Arboretum shall report to the board of directors. (1985 (Reg. Sess., 1986), c. 1014, s. 98; 1995, c. 490, s. 63.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in subdivision (2). For the applicability of this amendment, see editor's note.

Chapter 116B.

Escheats and Abandoned Property.

Article 2.

Abandoned Property.

Sec.
116B-11. Property subject to custody and control of the State.
116B-12. Property held by financial institutions.
116B-13. Property held by life insurers.
116B-22. Certain intangible property.
116B-23. (Expires June 30, 1997) Exclusion for forfeited reservation deposits.
116B-24 through 116B-26. [Reserved.]

Article 3.

Administration of Abandoned Property.

Sec.
116B-28. Notice by holders to owners required.
116B-29. Report of abandoned property by holder to Treasurer.
116B-31. Payment or delivery of abandoned property.
116B-34. Periods of limitation not a bar.

ARTICLE 2.

Abandoned Property.

§ 116B-10. Definitions.

CASE NOTES

Layaway Funds Are Subject to This Chapter. — As long as a customer may get a refund, merely possession of the funds, not ownership, has been ceded. The customer retains an equitable interest in the money. The retention of a legal or an equitable interest in the funds makes the customer the statutory owner of the layaway payments. As a holder, not an owner, the layaway funds within the store's control are subject to the escheat statute. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

§ 116B-11. Property subject to custody and control of the State.

Personal property that is deemed unclaimed or abandoned under this Chapter is subject to the custody and control of the State if it is:

(1) Tangible. — Tangible and physically located within the State; or

(2) Intangible. — Intangible, and any of the following applies:

   a. The last known address of the owner, as shown by the records of the holder, is within the State.

   b. The last known address of the owner as shown by the records of the holder is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and either of the following applies:

      1. The domicile of the holder is within the State.

      2. The intangible property was issued by this State, a political subdivision of this State, a business association, financial institution, or another person or entity, incorporated, organized, created, or otherwise located in this State.

c. No address of the owner appears on the records of the holder and either of the following applies:
   1. The domicile of the holder is within the State.
   2. The intangible property was issued by this State, a political subdivision of this State, a business association, financial institution, or another person or entity, incorporated, organized, created, or otherwise located in this State.

d. No address of the owner appears on the records of the holder and the domicile of the holder is not within the State, but it is proved that the last known address of the owner is in the State.

e. It is a sum payable on a money order, a traveler's check, or a similar written instrument and one of the following applies:
   1. The instrument was purchased within the State, as shown by the records of the holder.
   2. The place of purchase of the instrument is not shown in the records of the holder and the holder's principal place of business is within the State.
   3. The place of purchase of the instruments, as shown by the records of the holder, is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and the holder's principal place of business is within the State. (1979, 2nd Sess., c. 1311, s. 1; 1993, c. 541, s. 1.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 1, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-12. Property held by financial institutions.

(a) Most Deposits and Funds. — Any demand, savings, or matured time deposit, other than a certificate of deposit, in a financial institution or any funds paid toward the purchase of shares or another interest in a financial institution shall be presumed abandoned if the financial institution is unable to locate the owner and if, within the preceding five years, as to any demand deposit, or a savings or time deposit or interest having a value of one thousand dollars ($1,000) or less, or within the preceding 10 years, as to any such savings or time deposit or interest having a value of more than one thousand dollars ($1,000), the owner has not:

(1) Increased or decreased the amount of the deposit, shares, or claim or presented to the holder the passbook, evidence of deposit, or other appropriate record for the crediting of interest or dividends;
(2) Corresponded in writing with the holder concerning the deposit, shares, or claim;
(3) Otherwise indicated an interest in the deposit, shares, or claim as evidenced by a writing on file with the holder; or
(4) Maintained another account at the same financial institution that complies with (1), (2), or (3) above.

The financial institution shall make reasonable efforts to locate the owner and to determine whether its records disclose a different address for the owner.

(a1) Certificates of Deposit. — A certificate of deposit issued by a financial institution shall be presumed abandoned if the financial institution is unable to locate the certificate's owner and if, within the 10-year period beginning on the initial maturity date of the certificate, the owner did not take any of the actions listed in subsection (a) of this section. The financial institution shall make the same efforts to locate a certificate's owner as it would make under subsection (a) if the certificate were a demand deposit.

(b) Written Instruments. — Any sum payable on a check certified in the State or on any written instrument issued in the State on which a financial institution is directly liable shall be presumed abandoned if, within 10 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

(1) Negotiated the instrument;
(2) Corresponded in writing with the financial institution concerning it; nor
(3) Otherwise indicated an interest by a writing on file with the financial institution.

(c) Traveler's Checks. — Any sum payable on a traveler's check, money order or a similar written instrument on which a financial institution or other business association is directly liable shall be presumed abandoned if, within 15 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

(1) Negotiated the instrument;
(2) Corresponded in writing with the financial institution or other business association concerning it; nor
(3) Otherwise indicated an interest as indicated by a writing on file with the financial institution or other business association.

(d) Safe Deposit Box. — Any funds or other personal property, tangible or intangible, contained in or removed from a safe deposit box or other safekeeping repository shall be presumed abandoned if the owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the State Treasurer.

(e) Charges, Interest or Dividends on Abandoned Property. —

(1) Reasonable service charges, not to exceed the charges levied against similar active deposits or accounts, may be imposed on inactive deposits or accounts until the date on which the amount of the deposits or accounts must be remitted to the Treasurer under G.S. 116B-31.
(2) Interest or dividends due on inactive deposits, accounts, funds, or shares shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-31. (1979, 2nd Sess., c. 1311, s. 1; 1985, c. 215, s. 1; 1989, c. 114, s. 1; 1993, c. 541, s. 2.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 2, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-13. Property held by life insurers.

(a) Funds Owed under a Policy or Contract. — Any funds held or owing by a life insurer that are due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated shall be presumed abandoned if they have not been claimed or paid within five years after becoming due or payable as established from the insurer's records. Funds payable according to the insurer's records are deemed due and payable although the policy or contract has not been surrendered as required. The insurer shall make reasonable efforts to locate the insured or annuitant and to determine whether its records disclose a different address for the insured or annuitant.

(b) Presumption of Address of Beneficiary. — If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

(c) Presumption of Maturity. — A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured, and the proceeds are deemed to be due and payable if the policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has, within the preceding five years, assigned, readjusted or paid premiums on the policy, negotiated a dividend check, made payments on a loan, or corresponded in writing with the life insurer concerning the policy.

(d) Negotiable Instruments. — Any sum for the payment of a claim under an insurance policy or contract, which sum is payable on a negotiable instrument on which the insurer is the maker or drawer shall be presumed abandoned if, within five years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

(1) Negotiated the instrument;
(2) Corresponded in writing with the insurer concerning it; nor
(3) Otherwise indicated an interest by a writing on file with the insurer. (1979, 2nd Sess., c. 1311, s. 1; 1985, c. 666, s. 72; 1993, c. 541, s. 3.)

Editor's Note. — Session Laws 1993, c. 541, s. 10, provides that c. 541, s. 3, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-21. Property held in the ordinary course of business.

CASE NOTES

Property Subject to Escheat. — Property which is held in the ordinary course of business is deemed abandoned and subject to escheat when it is: 1) any item of property, not otherwise specifically covered under the escheat statute, 2) in the possession of one not the owner, and 3) held for five years after the sum becomes payable or distributable. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, 332 N.C. 484, 421 S.E.2d 356 (1992).

Demand for Return of Item Not Required. — This chapter does not require the customer to make a demand for the return of the item before it is deemed to be abandoned property. In fact, the statute clearly indicates that property is considered abandoned after five years have passed since the last assertion of ownership. Rose's Stores, Inc. v. Boyles, 106 N.C. App. 263, 416 S.E.2d 200, cert. granted, 332 N.C. 484, 421 S.E.2d 356 (1992).

§ 116B-22. Certain intangible property.

(a) Property. — Securities, principal, interest and dividends accruing to the securities, and other property that is subject to the custody and control of the State by application of G.S. 116B-11(2)b.2. or (2)c.2. shall be presumed abandoned if, within the shorter of the following periods after the date set by the issuer of the property for paying or delivering the property to its owner, the owner has not claimed the property or corresponded in writing with the holder:

(1) Five years.
(2) The time period set by another state for taking custody of the property pursuant to that state's unclaimed property laws.

(b) Income and Charges. — Any interest, dividends, or other earnings due on property presumed abandoned under subsection (a) of this section must be paid during the period prior to abandonment. Charges that are authorized by statute or by a contract may be deducted from the property during that period. (1993, c. 541, s. 4.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 makes this section effective December 1, 1993.

Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 4, which enacted this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-23. (Expires June 30, 1997) Exclusion for forfeited reservation deposits.

Property or funds withheld by a business association as a penalty or forfeiture or as damages in the event a person who has reserved the services of the business association fails to make use of and pay for the services, regardless of any practice or policy of the business association related to the return of withheld funds, is not unclaimed or abandoned property. (1996, 2nd Ex. Sess., c. 18, s. 7A(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 7A(c), made this section applicable to funds held or collected by business associations on or after July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 7A(b), provides that the Legislative Research Commission shall study the implementation and enforcement of Chapter 116B and shall report its findings and recommendations to the 1997 General Assembly.

Session Laws 1996, Second Extra Session, c. 18, s. 7A(c), provides that this section expires June 30, 1997, but all funds collected or held by business associations before June 30, 1997, shall not escheat.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

§§ 116B-24 through 116B-26: Reserved for future codification purposes.

Article 3.

Administration of Abandoned Property.

§ 116B-28. Notice by holders to owners required.

(a) Insurers. — Every insurer required to file a report pursuant to G.S. 116B-29 shall determine, prior to March 1 of each year, all owners who, of the preceding December 31, appear entitled to property having a value of fifty dollars ($50.00) or more and presumed abandoned under this Chapter and, on or before March 1, shall mail, first class postage prepaid, a notice to the last known address of each owner.

(b) Other Holders. — Every holder, other than insurers, required to file a report pursuant to G.S. 116B-29 shall determine, prior to November 1 of each year, all owners who, as of the preceding June 30, appear entitled to property having a value of fifty dollars ($50.00) or more and presumed abandoned under this Chapter and, on or before November 1, shall mail, first class postage prepaid, a notice to the last known address of each owner. A holder need not mail a notice to an owner for which the holder has no address.

(c) Contents. — Each notice required by this section shall contain all of the following:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that unless the owner presents a satisfactory proof of claim to the holder by the following February 1, if the holder is not an insurer, or October 1, if the holder is an insurer, the holder will send the property to the Treasurer, to whom all further claims must be directed.

(d) Charges for Notices. — The holder shall be entitled to deduct from the property of each owner to whom notice is sent an amount not to exceed fifty cents (50¢) to defray the expense of mailing the notice. If the property is other than cash in the possession of the holder, the holder may submit to the Escheat Fund, with the certification required by subsection (e) of this section, a sworn itemized statement of charges for notices mailed, not to exceed fifty cents (50¢) per notice, which shall be paid by the Escheat Fund within 30 days following receipt of the statement. The Escheat Fund shall charge the accounts of the respective owners with any charges so paid to holders.

(e) Certification of Mailing; Penalties; Right of Owners. — Every holder filing a report pursuant to G.S. 116B-29 shall certify to the Treasurer therewith that the notices required by subsections (a) and

(b) of this section have been mailed to the last known address of every owner named in the report. Failure or refusal to certify after written demand by the Treasurer or filing a false certification shall be a Class 3 misdemeanor, punishable, upon conviction, only by a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000) as the court, in its discretion, shall determine. Any owner who has suffered loss or damage by reason of the failure of a holder to mail the notice required by this section may recover actual loss or damage from the holder in an appropriate action at law.

(f) Other Notice. — All holders shall make reasonable efforts to locate and communicate with the owner prior to filing the report required by G.S. 116B-29 in order to prevent abandonment from being presumed, including the exercise of due diligence to determine whether the holder possesses a different address for the owner.

(g) Repealed by Session Laws 1993, c. 541, s. 5, effective December 1, 1993. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 4-6; 1993, c. 539, s. 898; c. 541, s. 5; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 5, which amended this section, applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

Session Laws 1993, c. 539, s. 898, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 116B-29. Report of abandoned property by holder to Treasurer.

(a) Reports to Treasurer. — Every holder of property, tangible or intangible, presumed abandoned under this Chapter shall report to the State Treasurer with respect to that property.

(b) Contents. — The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars ($50.00) or more;

(2) In the case of unclaimed funds of an insurer, the full name of the insured or annuitant and his last known address according to the insurer's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars ($50.00) each may be reported in the aggregate;

(4) A certification that the property reported has been held for the period required by Article 2 of this Chapter; and

(5) Other information which the Treasurer prescribes by rule.

(c) Names of Prior Holders. — If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) Time of Filing. — The report of holders other than insurers shall be filed before March 1 of each year and cover property presumed abandoned as of the prior June 30. The report of insurers shall be filed before November 1 of each year and cover property presumed abandoned as of the prior December 31. The Treasurer, in his discretion, may postpone the reporting date for a period not exceeding six months upon written request by any person required to file a report.

(e) Verification. — Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. Notwithstanding the above, any person authorized to bind the appropriate entity may make this verification.

(f) Negative Report. — If a holder receives a report form from the State Treasurer and holds no abandoned property, then a negative report must be filed. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 7, 8; 1983, c. 204, s. 3; 1985, c. 215, ss. 2, 3; 1987, c. 163, ss. 1-3; 1993, c. 541, s. 6.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 6, which amended this section, applies to property held before, on or after the effective date, regardless of when the property became or becomes presumptively abandoned.

§ 116B-31. Payment or delivery of abandoned property.

(a) Due Date. — A holder shall remit or deliver to the Treasurer with the report filed under G.S. 116B-29 any property required to be included in the report. These remittances shall be made payable to the Treasurer.

(b) Repealed by Session Laws 1993, c. 541, s. 7, effective December 1, 1993.

(c) Tangible Personal Property. — Prior to the delivery of any tangible personal property to the Treasurer, the holder shall report to the Treasurer the nature, condition and approximate value of each article of such property. The Treasurer may determine that delivery of specific tangible personal property is not in the best interest of the State, either because the sum or value is too small or for other good reason. The Treasurer shall notify the holder of the property of his determination and may refuse to accept delivery and custody of that property. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 14; 1987, c. 163, s. 6; 1993, c. 541, s. 7.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 7 applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

§ 116B-34. Periods of limitation not a bar.

The expiration of any period of time specified by statutes, contract, or court order, during which a claim may be made or an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report under this Chapter or to pay or deliver abandoned property to the Treasurer. (1979, 2nd Sess., c. 1311, s. 1; 1993, c. 541, s. 8.)

Editor's Note. — Session Laws 1993, c. 541, s. 10 provides that c. 541, s. 8 applies to property held before, on or after December 1, 1993, regardless of when the property became or becomes presumptively abandoned.

Chapter 116C.

Continuum of Education Programs.

§ 116C-1. Education Cabinet created.

Editor's Note. —

Session Laws 1995, c. 324, s. 15.12(a), as amended by Session Laws 1996, Second Extra Session, c. 18, s. 16.12, provides for the development by the Education Cabinet of a plan to meet the projected increase in higher education enrollments that result from the increased number of high school graduates and nontraditional students needing worker retraining.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1996

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1996 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

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